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AND THE RULES THEREUNDER.

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PREFACE

TO THE EIGHTH EDITION.

THIS, the Eighth, Edition contains the Acts, Rules, and other matter which appeared in previous Editions, whilst reference has been made to about ninety new cases of importance decided since 1898. The portion of the work dealing with Bills of Sale, which was entirely re-written for the Sixth Edition, has, as well as the rest of the treatise, been further annotated on the present occasion.

By the excision of what has become obsolete, it has been found possible to include the new decisions without increasing the size of the book by more than about eight pages.

My friend Mr. W. Valentine Ball, M.A., of the North-Eastern Circuit, has prepared the Table of Cases, and has revised the Index, the references under each heading of the latter being, as before, in alphabetical order.

The reader is requested to note up the cases in the Addenda which were reported whilst the work was going through the press.

R. R.

1, HARCOURT BUILDINGS, TEMPLE,
August, 1902.

PREFACE

TO THE THIRD EDITION.

THIS Edition, like its predecessors, is intended chiefly for the use of law students and candidates for the Examinations of the Institute of Chartered Accountants, to the latter of whom the Second Edition was recommended by the Council of that Institute as a text-book. I have again attempted to show, in clear and concise language, the main principles of the Law of Bankruptcy, without obscuring them under a perplexing mass of cases. I have endeavoured to arrange in scientific order the sections of the Bankruptcy Act, 1883, pointing out the principal differences between it and the Act of 1869, and I have also inserted in their proper places such portions of the Debtors Act, 1869, as are applicable to Bankruptcy matters, as well as the Bankruptcy Appeals (County Courts) Act, 1884. A glance at the list of cases, which includes those of permanent importance which have been reported up to the present month, will show that an effort has been made to select what may be called the leading decisions on the subject. One reference only for each case has been given in the foot-notes, but all the modern contemporary reports will be found in the list at the beginning of the book; where also may be seen a table which will enable the reader to find any required section of the Bankruptcy Act.

* * * * *

R. R.

TEMPLE, *May*, 1884.

LIST OF ABBREVIATIONS.

B. A. 1883	The Bankruptcy Act, 1883.
B. A. 1890	The Bankruptcy Act, 1890.
B. N.	Bankruptcy Notice.
B. T.	Board of Trade.
D. A.	Debtors Act, 1869.
O. R.	Official Receiver.
P. E.	Public Examination.
R. or Rs.	Bankruptcy Rule or Rules.
R. O.	Receiving Order.
S. or Ss.	Section or Sections of the B. A. 1883, unless where it otherwise appears.
Cf. (Latin abbrev.)	Compare.

"The Act," or "The Principal Act," refers to the B. A. 1883, unless where it otherwise appears.

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Page 15 . . . As to when a foreigner may be said to have "a place of business" in England, see *In re Bright*, 18 T. L. R. 37.

Page 43 . . . A judgment creditor levied execution, but on the goods being claimed by a third party, withdrew the sheriff, and, without waiting for the sheriff's return to the writ, issued a bankruptcy notice: *held*, that there was no stay of execution: *In re A Debtor, Ex p. Smith*, (1902) 2 K. B. 260.

Page 48 . . . The Court will not stay under s. 10 proceedings of a punitive character, *e.g.*, imprisonment for non-payment of rates: *In re Edgcome*, W. N. July 19, 1902.

Page 59 . . . After *In re* E. A. B. *add* Cf. *In re Pilling*, Times, Aug. 2, 1902.

Page 92 . . . *Held*, by Wright, J., that a pledgee of goods is bound to and must return them to the pledgor when paid the amount due on them, even though he has notice of an available act of bankruptcy: *In re Lawford* v. *Lawrence*, 50 W. R. 592. This may need re-consideration.

THE

PRINCIPLES OF BANKRUPTCY.

CHAPTER I.

INTRODUCTORY.

THE chief aim of every system of bankruptcy law should be to combine and regulate two great objects: first, the distribution of the debtor's effects in the most expeditious, equal, and economical manner; and, secondly, his release from the demands of his creditors, when he has made a full disclosure and surrender of his property, and has not been guilty of any fraud or misconduct. The bankruptcy laws are only applied to such debtors as are insolvent, or are deemed to be so, a creditor's remedies against other debtors being such as are afforded by the ordinary procedure of courts of justice. The law and practice in bankruptcy, therefore, naturally form a special subject of study, containing, as they do, many provisions and rules different from those that govern the enforcement of his rights by a creditor whose debtor is solvent.

The Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), succeeded that of 1869 (*a*), and came into operation, except where it was otherwise provided, from and immediately after the 31st of December, 1883 (*b*); and it has now been amended in many important respects by the Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), which came into operation on the 1st of January, 1891 (*c*). The Act of 1883 may now be referred to as the *principal* Act, and the two Acts, which are to be construed as one, may be cited collectively as the

(*a*) 32 & 33 Vict. c. 71. (*b*) S. 3.
(*c*) B. A. 1890, s. 30.

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Bankruptcy Acts, 1883 and 1890 (*d*). In this book the word "Act," except where the context shews otherwise, means the Act of 1883.

By the Act the London Bankruptcy Court is united to the Supreme Court of Judicature, the jurisdiction of the London Bankruptcy Court is transferred to the High Court, and for the purposes of such union and transfer the Judicature Acts are to be read or construed with the Bankruptcy Act (*e*). The sections which came into operation on the passing of the Act, *i.e.*, on the 25th of August, 1883 (*f*), need not be dealt with specially here. The Bankruptcy Acts are not, except so far as is expressly provided, applicable to Scotland or Ireland (*g*).

S. 168. Interpretation of terms.

In the Act, unless the context otherwise requires—

"*The Court*" means the Court having jurisdiction in bankruptcy under the Act: "*Affidavit*" includes statutory declarations, affirmations, and attestations on honour: "*Available act of bankruptcy*" means any act of bankruptcy available for a bankruptcy petition at the date of the presentation of the petition on which the receiving order is made: "*Debt provable in bankruptcy*" or "*provable debt*" includes any debt or liability by the Act made provable in bankruptcy: "*Gazetted*" means published in the *London Gazette*: "*General rules*" includes forms: "*Goods*" includes all chattels personal: "*High Court*" means Her Majesty's High Court of Justice: "*Local Bank*" means any bank in or in the neighbourhood of the bankruptcy district in which the proceedings are taken: "*Oath*" includes affirmation, statutory declaration, and attestation on honour: "*Ordinary resolution*" means a resolution decided by a majority in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution: "*Person*" includes a body of persons corporate or unincorporate: "*Prescribed*" means prescribed by general rules within the meaning of the Act: "*Property*" includes money, goods, things in action, land, and every description of property, whether real or personal, and whether situate in England or elsewhere; also obligations, easements, and every

(*d*) B. A. 1890, s. 31.
(*e*) S. 93.
(*f*) S. 3. They were ss. 66, 127—129, 153, 162, and 170.
(*g*) S. 2.

description of estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property as above defined: "*Resolution*" means ordinary resolution: "*Secured creditor*" means a person holding a mortgage charge or lien on the property of the debtor, or any part thereof, as a security for a debt due to him from the debtor: "*Schedule*" means schedule to the Act: "*Sheriff*" includes any officer charged with the execution of a writ or other process [but not a man in possession; *Ex parte Warren*, 15 Q. B. D. 48]: "*Special resolution*" means a resolution decided by a majority in number and three-fourths in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution; "*Treasury*" means the Commissioners of Her Majesty's Treasury: "*Trustee*" means the trustee in bankruptcy of a debtor's estate [but in the Rules it includes also the trustee under a composition or scheme of arrangement; R. 3]: "*The schedules* to the Act shall be construed and have effect as part of the Act" (*h*).

General Rules.—The Lord Chancellor may from time to time, with the concurrence of the President of the Board of Trade, make, revoke, and alter general rules for carrying into effect the object of the Act. All general rules so made are to be laid before Parliament within three weeks after they are made if Parliament is then sitting, and if it is not, within three weeks after the beginning of the then next session of Parliament, and are to be judicially noticed, and to have effect as if enacted by the Act. S. 127.

Such general rules as may be required for purposes of this Act may be made at any time, but any rules, so made, revoked, or altered, are not to extend the jurisdiction of the Court. No general rule under the provisions of this section is to come into operation until the expiration of one month after the same has been made and issued (*i*).

As has been seen, general rules include forms, and they, as well as the schedules, have effect as part of the Act.

Formal Defects, Adjournments, Amendments, and Extension of Time.—No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the Court before which an objection is made to the proceeding is of opinion that substantial injustice has been S. 143.

(*h*) S. 168; cf. R. 3.

(*i*) S. 127.

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caused by the defect or irregularity, and that the injustice cannot be remedied by any order of that Court.

No defect or irregularity in the appointment or election of a receiver, trustee, or member of a committee of inspection shall vitiate any act done by him in good faith (*k*).

S. 105.

The Court may adjourn any proceedings before it upon such terms, if any, as it may think fit to impose, and in like manner amend any written process or proceeding under the Act.

Where by the Act or Rules, the time for doing any act or thing is limited, the Court may extend the time either before or after the expiration thereof, upon such terms, if any, as it may think fit to impose, and, so, the Court may in a proper case abridge the time prescribed for taking any proceedings (*l*).

S. 92.

Courts and Officers.—Bankruptcy law is administered—(1) In the High Court: (2) In local Bankruptcy Courts (*m*).

S. 94.

Transaction of bankruptcy business by special judge of High Court.

As to the High Court, it is enacted by s. 94 that subject to general rules, and to orders of transfer made under the authority of the Judicature Acts, (*a*) All matters pending in the London Bankruptcy Court at the commencement of this Act; and (*b*) All matters which would have been within the exclusive jurisdiction of the London Bankruptcy Court, if this Act had not passed; and (*c*) All matters in respect of which jurisdiction is given to the High Court by this Act, shall be assigned to such Division of the High Court as the Lord Chancellor may from time to time direct; further, that all such matters shall, subject as aforesaid, be ordinarily transacted and disposed of by or under the direction of one of the judges of the High Court, and the Lord Chancellor shall from time to time assign a judge for that purpose: provided that during vacation, or during the illness of the judge so assigned, or during his absence, or for any other reasonable cause, such matters, or any part thereof, may be transacted and disposed of by or under the directions of any judge of the High Court named for that purpose by the Lord Chancellor. By the same section the officers and others who were, at the commencement of this Act, attached to the London Bankruptcy Court, became

(*k*) S. 143 : see Rs. 207, 350.

(*l*) S. 105 : R. 351.

(*m*) S. 92.

officers of the Supreme Court of Judicature, and attached to the High Court. Subject to general rules all bankruptcy matters are to be entitled, "In Bankruptcy" (*n*).

The London Bankruptcy District comprises the City of London and the liberties thereof, and the places within the districts of the County Courts of Bloomsbury, Bow, Brompton, Clerkenwell, Lambeth, Marylebone, Shoreditch, Southwark, Westminster, and Whitechapel (*o*). The local Bankruptcy Courts are the provincial County Courts, except such as are by order excluded from bankruptcy jurisdiction (*p*).

S. 96, Sch. 3.

S. 92.

By s. 116, no registrar or other officer attached to any Court having jurisdiction in bankruptcy, shall, during his continuance in office, be capable of being elected or sitting as a member of the House of Commons: and no registrar or official receiver or other officer attached to any such Court shall, during his continuance in office, either directly or indirectly, by himself, his clerk, or partner, act as solicitor in any proceeding in bankruptcy, or in any prosecution of a debtor by order of the Court, and if he does so act he shall be liable to be dismissed from office; but nothing in this section shall affect the right of any registrar or officer appointed before the passing of this Act to act as solicitor by himself, his clerk, or partner to the extent permitted by s. 69 of the Bankruptcy Act, 1869 (*q*).

S. 116. Disabilities of bankruptcy officials.

Solicitors of the High Court have a right of audience in bankruptcy matters in the High Court (*r*), but not in the Court of Appeal (*s*).

S. 151.

Board of Trade, Official Receivers, Comptroller.—The administrative functions exercised by the Board of Trade, official receivers, and the comptroller in bankruptcy, which form so distinctive a feature of the Act, will be dealt with hereafter.

Where Proceedings taken.—By s. 95 if the debtor against or by whom a bankruptcy petition is presented has

S. 95. Petition, where to be presented.

(*n*) S. 94.
(*o*) S. 96 and Sch. 3.
(*p*) S. 92.
(*q*) S. 116. The section of the Act of 1869 referred to only precluded him from acting as solicitor in bankruptcy proceedings in the Court of which he was registrar or officer, or on appeal from such Court, or in prosecutions of bankrupts directed by the judge of such Court.
(*r*) S. 151; *Ex p. Reynolds*, 15 Q. B. D. 169.
(*s*) *In re Elderton*, 4 Mor. 36.

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resided or carried on business within the *London* bankruptcy district as defined by this Act for the greater part of the six months immediately preceding the presentation of the petition, or for a longer period during those six months than in the district of any County Court, *or* is not resident in England, *or* if the petitioning creditor is unable to ascertain the residence of the debtor, the petition is to be presented to the High Court; in any other case the petition is to be presented to the County Court for the district in which the debtor has resided or carried on business for the longest period during the six months immediately preceding the presentation of the petition. Nothing, however, in this section is to invalidate a proceeding by reason of its being taken in a wrong Court (*t*).

S. 97. Transfer of proceedings from Court to Court.

Transfer of Proceedings: Stating special case.—Subject to the provisions of the Act, every Court having original jurisdiction in bankruptcy is to have jurisdiction throughout England. Any proceedings in bankruptcy may at any time, and at any stage thereof, and either with or without application from any of the parties thereto, be transferred by any prescribed authority and in the prescribed manner from one Court to another Court, or may by the like authority be retained in the Court in which the proceedings were commenced, although it may not be the Court in which the proceedings ought to have been commenced.

Special case for question of law.

If any question of law arises in any bankruptcy proceeding in a County Court which all the parties to the proceeding desire, or which one of them and the judge of the County Court may desire, to have determined in the first instance in the High Court, the judge is to state the facts, in the form of a *special case*, for the opinion of the High Court. The special case and the proceedings, or such of them as may be required, will be transmitted to the High Court for the purposes of the determination (*u*).

S. 100. Powers of County Court.

Jurisdiction of Local Courts.—A County Court for the purposes of its bankruptcy jurisdiction, in addition to its ordinary powers, has all the powers and jurisdiction of the High Court, and the orders of the Court may be enforced accordingly in manner prescribed (*x*). Thus, a County

(*t*) S. 95: cf. Rs. 144—145. (*u*) S. 97: cf. Rs. 18—26, 145.
(*x*) S. 100.

Court judge may commit for contempt a person who disobeys a summons to attend the Court to be examined under s. 27 (*post*, p. 92) (*y*).

S. 99. Jurisdiction in bankruptcy of registrar.

Jurisdiction of Registrars.—By s. 99 : (1) "The registrars in bankruptcy of the High Court, and the registrars of a County Court having jurisdiction in bankruptcy, shall have the powers and jurisdiction in this section mentioned, and any order made or act done by such registrars in the exercise of the said powers and jurisdiction shall be deemed the order or act of the Court.

(2) "Subject to general rules limiting the powers conferred by this section, a registrar shall have power—

(*a*) "To hear bankruptcy petitions, and to make receiving orders and adjudications thereon :

(*b*) "To hold the public examination of debtors :

(*c*) "To grant orders of discharge where the application is not opposed : R. 236.

(*d*) "To approve compositions or schemes of arrangement when they are not opposed : R. 200.

(*e*) "To make interim orders in any case of urgency :

(*f*) "To make any order or exercise any jurisdiction which by any rule in that behalf is prescribed as proper to be made or exercised in chambers :

(*g*) "To hear and determine any unopposed or *ex parte* application :

(*h*) "To summon and examine any person known or suspected to have in his possession effects of the debtor or to be indebted to him, or capable of giving information respecting the debtor, his dealings, or property.

Additional jurisdiction of registrars of the High Court,

(3) "The registrars in bankruptcy of the High Court shall also have power to grant orders of discharge and certificates of removal of disqualifications, and to approve compositions and schemes of arrangement.

(4) "A registrar shall not have power to commit for contempt of Court.

and of specified registrars of local Courts.

(5) "The Lord Chancellor may from time to time by order direct that any specified registrar of a County Court shall have and exercise all the powers of a bankruptcy registrar of the High Court" (*z*).

(*y*) *Reg.* v. *Judge of County Court at Croydon*, 13 Q. B. D. 963.
(*z*) S. 99 : cf. R. 7, and Order of Bankruptcy Judge, *post*.

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S. 98.

Chambers.—Subject to the provisions of the Act and to general rules the judge of the High Court may exercise in chambers the whole or any part of his jurisdiction. Certain matters mentioned in R. 6 are heard in Court (*a*).

S. 102.

General Power of Bankruptcy Courts.—Large powers are given to Bankruptcy Courts by s. 102, which (*inter alia*) enacts that:—"Subject to the provisions of this Act, every Court having jurisdiction in bankruptcy under this Act shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or of fact, which may arise in any case of bankruptcy coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case: provided that the jurisdiction hereby given shall not be exercised by the *County Court* for the purpose of adjudicating upon any claim, not arising out of the bankruptcy, which might heretofore have been enforced by action in the High Court, unless all parties to the proceeding consent thereto, or the money, money's worth or right in dispute does not in the opinion of the judge exceed in value *two hundred pounds*.

Limitation of powers of County Courts.

Courts exercising bankruptcy jurisdiction not to be restrained by other Courts.

"A Court having jurisdiction in bankruptcy under this Act shall not be subject to be restrained in the execution of its powers under this Act by the order of any other Court, nor shall any appeal lie from its decisions, except in manner directed by this Act."

Trial by jury.

If in any proceeding in bankruptcy there arises any question of fact which *either* of the parties desire to be tried before a jury instead of by the Court itself, or which the Court thinks ought to be tried by a jury, the Court may if it thinks fit direct the trial to be had with a jury.

Transfer of pending actions.

Where a receiving order has been made in the High Court, the judge by whom such order was made, has power, if he sees fit, without any further consent, to order the transfer to such judge of any action pending in any other division, brought or continued by or against the bankrupt.

Punishment of defaulting trustees, debtors, and others.

Where default is made by a trustee, debtor, or other person in obeying any order or direction given by the Board of Trade or by an official receiver or any other officer of the

(*a*) S. 98 : cf. Rs. 6 and 9.

Board of Trade under any power conferred by this Act, the Court may, on the application of the Board of Trade or an official receiver or other duly authorised person order such defaulting trustee, debtor, or person to comply with the order or direction so given; and the Court may also, if it shall think fit, upon any such application, make an immediate order for the committal of such defaulting trustee, debtor, or other person; but the power hereby given is to be deemed to be in addition to and not in substitution for any other right or remedy in respect of such default (*b*).

The proviso as to County Courts in the above section gives an absolute right, with regard to claims not arising out of the bankruptcy and enforceable by action in the High Court, where the property in question exceeds in value £200, to have the matter disposed of elsewhere than in the County Court (*c*).

The Crown.—Generally speaking the Crown is not bound by a statute unless there be words to that effect, and though it be named in some sections it is not thereby bound by the others (*d*). The present Act provides that—

S. 150. Certain provisions to bind the Crown.

"Save as herein provided the provisions of this Act relating to the remedies against the property of a debtor, the priorities of debts, the effect of a composition or scheme of arrangement, and the effect of a discharge shall bind the Crown" (*e*). Except as to these matters, the Act will not bind the Crown. The provisions of s. 55 as to the disclaimer of onerous property are provisions relating to remedies against the property of the debtor (*f*).

S. 117. Enforcement of orders of Courts throughout the United Kingdom.

Orders and Warrants of Court.—The Courts having bankruptcy jurisdiction in England, Ireland, and Scotland respectively, will enforce the orders of each other (s. 117). And the High Court, the County Courts, the Courts having jurisdiction in bankruptcy in Scotland and Ireland, and every British Court elsewhere having jurisdiction in

(*b*) S. 102.

(*c*) As to claims arising out of the bankruptcy, see *In re Hawke*, 16 Q. B. D. 503.

(*d*) *Ex p. Postmaster-General*, 10 Ch. D. 595.

(*e*) S. 150.

(*f*) *In re Thomas*, 21 Q. B. D. 380. As to remedies against property of debtor, cf. also ss. 9, 42 (as amended by s. 28 of the B. A. 1890), s. 45 (pp. 48, 121, 89); priorities of debts, s. 40, sub-ss. 3—6; the Preferential Payments in Bankruptcy Act, 1888, and B. A. 1890, s. 3 (18); composition or scheme, B. A. 1890, s. 3; B. A. 1883, ss. 19 and 23 (pp. 60, 64); discharge, s. 30; B. A. 1890, s. 10 (pp. 168, 169).

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bankruptcy or insolvency, and the officers of those Courts respectively, will severally act in aid of and be auxiliary to each other in all matters of bankruptcy (s. 118). Any warrant of a Court having jurisdiction in bankruptcy in England may be enforced in Scotland, Ireland, the Isle of Man, the Channel Islands, and elsewhere in Her Majesty's dominions, in the same manner and subject to the same privileges in and subject to which a warrant issued by any justice of the peace against a person for an indictable offence against the laws of England may be executed in those parts of Her Majesty's dominions respectively in pursuance of the statutes in that behalf. A search warrant issued by a Court having jurisdiction in bankruptcy for the discovery of any property of a debtor may be executed in manner prescribed or in the same way as an ordinary search warrant for property supposed to be stolen may be executed (s. 119; cf. R. 83).

S. 118. Courts to be auxiliary to each other.

S. 119. Warrants of bankruptcy Courts.

S. 120. Commitment to prison.

Where the Court commits any person to prison, the commitment may be to such convenient prison as the Court thinks expedient, and a gaoler refusing to receive any prisoner so committed is liable for every such refusal to a fine not exceeding one hundred pounds (s. 120; cf. R. 85).

S. 105.

Evidence.—Subject to general rules, the Court may take evidence either *viva voce*, or by interrogatories, or upon affidavit, or by commission abroad (*g*).

S. 132. Gazette to be evidence.

A copy of the *London Gazette* containing any notice inserted therein in pursuance of the Act is evidence of the facts stated in the notice. And a copy containing any notice of a receiving order, or of an order adjudging a debtor bankrupt, is conclusive evidence in all legal proceedings of the order having been duly made, and of its date (s. 132).

S. 133. Evidence of proceedings at meetings of creditors.

A minute of proceedings at a meeting of creditors under this Act, signed at the same or the next ensuing meeting, by a person describing himself as, or appearing to be, chairman of the meeting at which the minute is signed, shall be received in evidence without further proof.

Until the contrary is proved, every meeting of creditors in respect of the proceedings whereof a minute has been

(*g*) S. 105 (5); cf. Rs. 61—72.

so signed shall be deemed to have been duly convened and held, and all resolutions passed or proceedings had thereat to have been duly passed or had (s. 133).

S. 134. Evidence of proceedings in bankruptcy.

Any petition or copy of a petition in bankruptcy, any order or certificate or copy of an order or certificate made by any Court having jurisdiction in bankruptcy, any instrument or copy of an instrument, affidavit, or document made or used in the course of any bankruptcy proceedings, or other proceedings had under this Act, shall, if it appears to be sealed with the seal of any Court having jurisdiction in bankruptcy, or purports to be signed by any judge thereof, or is certified as a true copy by any registrar thereof, be receivable in evidence in all legal proceedings whatever (s. 134).

S. 135. Swearing of affidavits.

Subject to general rules, any affidavit to be used in a bankruptcy Court may be sworn before any person authorised to administer oaths in the High Court, or in the Court of Chancery of the county palatine of Lancaster, or before any registrar of a bankruptcy Court, or before any officer of a bankruptcy Court authorised in writing on that behalf by the judge of the Court, or, in the case of a person residing in Scotland or in Ireland, before a judge ordinary, magistrate, or justice of the peace or in the case of a person who is out of the Kingdom of Great Britain and Ireland, before a magistrate or justice of the peace or other person qualified to administer oaths in the country where he resides, he being certified to be a magistrate or justice of the peace, or qualified as aforesaid by a British minister or British consul, or by a notary public (s. 135), and also in England and Wales before a justice of the peace for the county or place where it was sworn (B. A., 1890, s. 24) (*h*).

S. 136. Death of witness.

In case of the death of the debtor or his wife, or of a witness whose evidence has been received by any Court in any proceeding under the Act, the deceased person's deposition purporting to be sealed with the seal of the Court or a copy thereof purporting to be so sealed, is to be admitted as evidence of the matters therein deposed to (s. 136).

S. 137. Bankruptcy Courts to have seals.

Every Court having jurisdiction in bankruptcy under the Act, has a seal, and judicial notice is taken of it, and of the signature of the judge or registrar of any such Court in all legal proceedings (s. 137).

(*h*) See also as to affidavits, Rs. 47—58, 219a.

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S. 138. Certificate of appointment of trustee.

S. 140. Proceedings of Board of Trade.

A certificate of the Board of Trade that a person has been appointed trustee under this Act, is conclusive evidence of his appointment (s. 138). All documents purporting to be orders or certificates made or issued by the Board, and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or any person authorised in that behalf by the President of the Board, are received in evidence, and deemed to be such orders or certificates without further proof unless the contrary is shown. A certificate signed by such President that any order made, certificate issued, or act done, is the order, certificate, or act of the Board, is conclusive evidence of the fact so certified (s. 140).

S. 141. Computation of time.

Time.—Where by this Act any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, then in the computation of that limited time the same is to be taken as exclusive of the day of that date or of the happening of that event, and as commencing at the beginning of the next following day; and the act or proceeding is to be done or taken at latest on the last day of that limited time as so computed, unless the last day is a Sunday, Christmas Day, Good Friday, or Monday or Tuesday in Easter Week, or a day appointed for public fast, humiliation, or thanksgiving, or a day on which the Court does not sit, in which case any act or proceeding is to be considered as done or taken in due time if it is done or taken on the next day afterwards, which must not be one of the days in this section specified.

Where by this Act any act or proceeding is directed to be done or taken on a certain day, then if that day happens to be one of the days in this section specified, the act or proceeding is to be considered as done or taken in due time if it is done or taken on the next day afterwards, which must not be one of the days in this section specified (s. 141: cf. R. 4; see *In re North*, (1895) 2 Q. B. 264).

S. 142. Service of notices.

Notices.—All notices and other documents for the service of which no special mode is directed may be sent by prepaid post letter to the last known address of the person to be served therewith (s. 142): cf. R. 92, which requires the letter to be registered in the case of service of an order or other proceeding in Court.

S. 144. Exemption of deeds, &c., from stamp duty.

Exemption from Stamp Duty.—Every deed, conveyance, assignment, surrender, admission, or other assurance relating solely to freehold, leasehold, copyhold, or customary property, or to any mortgage charge, or other incumbrance on, or any estate, right, or interest, in any real or personal property, which is part of the estate of any bankrupt, and which, after the execution of the deed, conveyance, assignment, surrender, admission, or other assurance, either at law or in equity, is or remains the estate of the bankrupt or of the trustee under the bankruptcy, and every power of attorney, proxy paper, writ, order, certificate, affidavit, bond, or other instrument or writing relating solely to the property of any bankrupt, or to any proceeding under any bankruptcy, is exempt from stamp duty, except in respect of fees under the Act (s. 144) : see Rs. 59, 60.

S. 149. Construction of Acts mentioning commission of bankruptcy, &c.

Construction of former Acts, &c.—Where in any Act of Parliament, instrument, or proceeding passed, executed, or taken before the commencement of this Act mention is made of a commission of bankruptcy or fiat in bankruptcy, the same shall be construed, with reference to the proceedings under a bankruptcy petition, as if a commission of or a fiat in bankruptcy had been actually issued at the time of the presentation of such petition.

Where by any Act or instrument, reference is made to the Bankruptcy Act, 1869, the Act or instrument shall be construed and have effect as if reference were made therein to the corresponding provisions of this Act (s. 149).

S. 169. Repeal of enactments.

Repeal.—The Acts described in the fifth schedule (*post*, p. 201), are repealed to the extent mentioned in that schedule ; but the appeal does not affect—

(*a*) Anything done or suffered before the commencement of this Act under any enactment repealed by this Act ; nor (*b*) Any right or privilege acquired, or duty imposed, or liability or disqualification incurred, under any enactment so repealed ; nor (*c*) Any fine, forfeiture, or other punishment incurred or to be incurred in respect of any offence committed or to be committed against any enactment so repealed ; nor (*d*) The institution or continuance of any proceeding or other remedy, whether under any enactment so repealed, or otherwise, for ascertaining any such liability or disqualification, or enforcing or recovering any such fine, forfeiture, or punishment as aforesaid (s. 169 (1, 2)).

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Notwithstanding this repeal, the proceedings under any bankruptcy petition, liquidation by arrangement, or composition with creditors under the B. A., 1869, pending at the commencement of this Act, shall, except so far as any provision of this Act is expressly applied to pending proceedings, continue, and all the provisions of the B. A., 1869, shall, except as aforesaid, apply thereto, as if this Act had not passed (*i*).

Bankruptcy (Discharge and Closure) Act, 1887.

Bankruptcy (Discharge and Closure) Act, 1887 (*k*).—This Act enables a liquidating debtor or a bankrupt under the B. A., 1869, to apply to the Court for an order of discharge, which the Court may grant with or without a suspension thereof, or with or without conditions, provided that the applicant has not committed a misdemeanour under the Debtors Act, 1869, or any amendment thereof. By it also pending bankruptcies, under the B. A., 1869, were closed on the 31st of December, 1887, unless the Court, on the application of the trustee, on or before that day, postponed the close (*l*).

(*i*) S. 169 (3). The exceptions are contained in ss. 159—162 and 170, p. 2; cf. Rs. 352—354.
(*k*) 50 & 51 Vict. . 56.
(*l*) S. 3.

CHAPTER II.

WHO MAY BE MADE BANKRUPT.

Petitions under the Act of 1883. S. 5.

If a debtor commits an act of bankruptcy the Court may, on a bankruptcy petition being presented by a creditor, or by the debtor, make a *receiving order* for the protection of the estate. The creditors may then at a meeting held by the Official Receiver, resolve to accept a proposal made to them by the debtor for a composition or scheme of arrangement, and their resolution to do so may be approved by the Court. If these proceedings do not take place the Court is to adjudge the debtor a bankrupt, but a composition or scheme may afterwards be resolved on and approved, upon which the bankruptcy may be annulled (*a*).

Who are subject to the bankruptcy laws. S. 126.

The Act abolishes distinctions between traders and non-traders; but no person, not being a trader within the meaning of the Act of 1861, is to be adjudged bankrupt for a debt contracted before the passing of that Act (*b*).

Foreigners.—Can a foreigner be made bankrupt in this country? Yes, if he is a debtor subject to the bankruptcy laws of England, that is, if he comes here and commits an act of bankruptcy here, and if the conditions mentioned in s. 6 exist (*c*). By that section a creditor cannot present a bankruptcy petition against a debtor, unless the debtor is domiciled in England, or, within a year before the date of the presentation of the petition, has ordinarily resided or had a dwelling-house or place of business in England. Thus, where a domiciled Frenchman came to London for three months with his wife and servants to conduct an action here, and rented furnished rooms, of which he had the exclusive use, on different floors in a house in which the landlord reserved one room for his own use, but reserved no control over the debtor's rooms, the debtor was

(*a*) B. A. 1890, s. 3; B. A. 1883, ss. 5, 20, 23; B. A. 1890, s. 6.
(*b*) S. 126.
(*c*) *Cooke* v. *Vogeler Co.*, (1901) App. Cas. 102.

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held to have "had a dwelling-house in England," and so to have become subject to the bankruptcy laws (*d*). Again, a debtor, domiciled abroad, who neither had a dwelling-house or place of business in England, but who had for eighteen months rented a room at a London hotel, for which he had paid continuously during that period, rendered himself subject thereby to the bankruptcy laws as having ordinarily resided here (*e*). It was held otherwise in the case of a foreigner who having had a house in England went abroad, and abandoned the house as a residence more than a year before the petition, though during part of the year he retained the lease of the house and might have returned to it (*f*). An ordinary residence here is not incompatible with an ordinary residence abroad during the same period: but a foreigner passing through England, without any intention of remaining for any definite time, would not by merely staying at an hotel bring himself within the section (*e*). But there may be cases in which a creditor might serve him with a judgment summons under s. 5 of the Debtors Act, 1869, and get a receiving order against him under s. 103 of B. A., 1883 (*g*). A foreigner resident abroad cannot be made bankrupt in England, though he has a place of business and has contracted debts and acquired assets in England, unless he commits an act of bankruptcy here, and he cannot be served with a bankruptcy notice abroad (*h*).

Infants.—An infant, as a rule, is not liable to be made bankrupt, even though he carries on a trade, and for the purposes of it obtains goods on credit (*i*), unless, indeed, he fraudulently makes a direct representation that he is of full age; but it is very doubtful whether, even then, he can be made bankrupt, for the effect of the fraudulent representation is not so much to create a "debt," on which a petition for adjudication can be grounded, but rather an equitable liability, which, though not a proper petitioning creditor's debt, might be proved for, if the infant became bankrupt when of full age (*i*). Possibly, as an adjudication once made

(*d*) *In re Hecquard*, 24 Q. B. D. 71.
(*e*) *In re Norris*, 5 Mor. 111.
(*f*) *In re Nordenfelt*, (1895) 1 Q. B. 151.
(*g*) *In re Clark, Ex p. Clark*, (1898) 1 Q. B. 20. See *post*, pp. 25, 44.
(*h*) *In re Pearson*, (1892) 2 Q. B. 263; *Cooke* v. *Vogeler Co.*, (1901) App. Cas. 102.
(*i*) *Ex p. Jones, In re J.*, 18 Ch. D. 109.

is conclusive so long as it stands, it may be that an infant, who has been adjudicated bankrupt, can appeal only within the prescribed time, unless he obtain special leave to do so afterwards (*k*).

By the Infants' Relief Act, 1874, contracts entered into by infants for the repayment of money lent or to be lent, or for goods supplied or to be supplied (other than contracts for necessaries), and all accounts stated with infants, are absolutely void; and though the infant make a promise after full age to pay any debt contracted during infancy, or ratify any promise or contract made during infancy, no action can be brought on such promise or ratification whether there be any new consideration for it or not. Accordingly, a debt rendered void by this Act, even though there has been a ratification after the infant has come of age, will not be a good debt on which to ground a bankruptcy petition (*Ex parte Kibble*, L. R. 10 Ch. 373). The decision in this case might possibly have been otherwise if the debt had been contracted for necessaries. It is clear, however, that an infant is not liable on a bill of exchange or promissory note, though he may have given it for necessaries (*l*).

Infant partner.

Judgment for a debt contracted by a firm having an infant partner should be against the adult partner, or against the firm excluding the infant, and bankruptcy proceedings should be in the same form; but the partnership assets are available for the partnership creditors (*m*).

Married Women.—As a rule, a married woman being incapable of contracting as a *feme sole*, cannot be made a bankrupt; but there are exceptions: (1) A married woman trading as a *feme sole* by the custom of London (*n*): (2) A woman whose husband is civilly dead, has abjured the realm, is in exile or in penal servitude (*o*): (3) A woman judicially separated from her husband (20 & 21 Vict. c. 85, s. 26), or who has obtained a protection order (*Ib.* s. 21), being able to contract as a *feme sole*, may probably be

(*k*) See *Ex p. Learoyd*, 10 Ch. D. 3; *Ex p. Tucker*, 12 Ch. D. 308. See also *In re West*, 22 L. J. Bkcy. 71, under the Act of 1849; but cf. s. 35.
(*l*) *In re Soltykoff*, (1891) 1 Q. B. 413.
(*m*) *Lovell* v. *Beauchamp*, (1894) App. Cas. 607.
(*n*) *La Vie* v. *Phillips*, 1 W. Bl. 570.
(*o*) *Ex p. Franks*, 7 Bing. 762; *Sparrow* v. *Carruthers*, 2 W. Bl. 1197.

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made a bankrupt (*p*): (4) Although under the Married Women's Property Act, 1882, judgment can in certain cases be signed against a married woman, execution thereon must be limited to such separate property as she is not restrained from anticipating (*q*); and such a judgment, creating no *personal* liability, does not, *per se*, render a married woman subject to the bankruptcy laws (*In re Gardiner*, 20 Q. B. D. 249), and a bankruptcy notice cannot be issued on a judgment of this kind (*r*); even though the defendant has become a widow since judgment (*s*). And where a judgment has been obtained against a married woman in a firm name under which she has traded, a receiving order cannot be made on a petition grounded on non-compliance with a bankruptcy notice calling on her to pay the judgment debt, for the judgment creates no personal liability (*t*). Again, where the hearing of a petition presented against a spinster was adjourned, and during the adjournment she got married, the petition failed (*u*). However, by s. 1 (5) of the above Act, "Every married woman *carrying on a trade separately* from her husband, shall, in respect of her separate property, be subject to the bankruptcy laws in the same way as if she were a *feme sole*" (*x*). But this section only applies where the assets and profits of the trade belong wholly to the wife, and not to her and her husband jointly (*y*). In the former case she may be said to trade separately from her husband, even though he lives in the same house and takes some part in the trade (*z*). If she has ceased to trade she remains liable to bankruptcy for trade debts, and possibly for others, contracted by her during the trading period (*a*). In fact she continues to trade as long as her trade debts are undischarged (*b*).

(*p*) *Ramsden* v. *Brearley*, L. R. 10 Q. B. 147. Cf. also 41 Vict. c. 19.
(*q*) *Scott* v. *Morley*, 20 Q. B. D. 120. Where, however, a married woman institutes proceedings, the costs of the opposite party may be ordered to be paid out of property subject to a restraint on anticipation: M. W. P. Act, 1893, s. 2.
(*r*) *In re Lynes*, (1893) 2 Q. B. 113.
(*s*) *In re Hewett, Ex p. Levene*, (1895) 1 Q. B. 328.
(*t*) *In re Frances Handford & Co.*, (1899) 1 Q. B. 566.
(*u*) *In re A Debtor*, (1898) 2 Q. B. 576; 5 Man. 122.
(*x*) 45 & 46 Vict. c. 72, s. 1 (5).
(*y*) *In re Helsby*, 1 Man. 12; explained *In re Edwards*, 2 Man. 182
(*z*) *In re Worsley*, (1901) 1 K. B. 309.
(*a*) *In re Dagnall*, (1896) 2 Q. B. 407.
(*b*) *In re Worsley*, *supra*.

Where a bankrupt married woman was entitled to rents for her separate use for life subject to a restraint on anticipation, and her husband died during the bankruptcy, it was held, that as by the death the restraint ceased to operate, the trustee in bankruptcy thereupon became entitled to receive the rents (*c*).

A married woman is personally liable for her antenuptial contracts (*d*).

By the B. A. 1883 (s. 152), nothing in it is to affect the provisions of the M. W. P. Act, 1882 (*e*). S. 152.

Lunatics.—A lunatic may, it seems, be made a bankrupt when he has contracted the debt and committed the act of bankruptcy whilst sane (*f*); but it is doubtful if bankruptcy proceedings can be properly taken, without the leave of the Court in Lunacy, on an act of bankruptcy committed after an inquisition in lunacy (*g*). As to proof of debts and other matters, s. 148 provides that for all or any of the purposes of the Act a lunatic may act by his committee or *curator bonis;* and where it is beneficial to the lunatic the Court exercising lunacy jurisdiction will allow his committee or *curator bonis* to file a declaration of inability to pay his debts (*h*), or to consent to an adjudication (*i*). S. 148.

Convicted Felons.—The forfeiture of a convicted felon's property was abolished by 33 & 34 Vict. c. 23, and such a person may be adjudged bankrupt (*k*).

Peers and Members of the House of Commons.— Persons having privilege of Parliament may be dealt with under the Act as if they had no such privilege (*l*), and peers and members of the House of Commons are liable to the disqualifications to be presently mentioned. S. 124.

Corporate and Registered Companies.—A receiving order will not be made against any corporation or against any partnership or association, or company registered under S. 123.

(*c*) *In re Wheeler's Settlement Trusts*, (1899) 2 Ch. 717.
(*d*) *Robinson* v. *Lynes*, (1894) 2 Q. B. 577.
(*e*) See in particular ss. 1 (5) and 3 of the M. W. P. A. 1882.
(*f*) *Anon.*, 13 Ves. 590; *Ex p. Stamp*, De G. 345.
(*g*) *In re Farnham*, (1895) 2 Ch. 799; S. C., (1896) 1 Ch. 836.
(*h*) *In re James*, 12 Q. B. D. 332; see, as to practice, R. 271, and *In re R. S. A.*, (1901) 2 K. B. 32.
(*i*) *In re Lee*, 23 Ch. D. 216.
(*k*) *Ex p. Graves*, 19 Ch. D. 1.
(*l*) S. 124.

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the Companies Act, 1862 (*m*); but other partnerships are liable to bankruptcy. The Companies Act, 1862, by s. 4, enacts that no company, association, or partnership of more than *ten* persons may be formed to carry on a banking business, or of more than *twenty* to carry on any other business involving the acquisition of gain, unless registered under the Act, or formed in pursuance of some other Act or of letters patent; and by s. 6 any seven or more persons may be registered as a company.

S. 148.

For all or any of the purposes of the Act a corporation may act by any of its officers (*n*) authorised in that behalf under the seal of the corporation, and a firm may act by any of its members (*o*). Rule 258 applies to unincorporated companies; but a limited company incorporated under the Companies Acts takes bankruptcy proceedings in its own name by its secretary, or, what is perhaps a better way, the secretary takes them in his name stating that he is so authorised in writing under the seal of the company (*p*).

In the case of a company which is being wound up, bankruptcy or other proceedings should be taken by the liquidator in the name and on behalf of the company, and not in his own name (*q*).

The Companies (Winding-up) Act, 1890 (*r*), applies much of the bankruptcy law and practice to the winding-up of insolvent companies, and enables the Board of Trade to exercise, through official receivers, supervision over any such winding-up. Jurisdiction under this Act is exercised in the High Court by a judge specially assigned, and in the County Courts by such County Courts only as are not excluded from bankruptcy jurisdiction.

S. 32.

Disqualifications of Bankrupt and their Removal.—Where a debtor is adjudged bankrupt (*s*) he shall, subject to the provisions of this Act, be *disqualified* for—

(*a*) Sitting or voting in the House of Lords, or on any committee thereof, or being elected as a peer

(*m*) S. 123.
(*n*) Including a clerk: *In re J. G. Tomkins & Co.*, 8 Man. 132.
(*o*) S. 148. See also Rs. 246, 258—270.
(*p*) *In re Collier*, 8 Mor. 80; *In re Whitley*, *Ib.* 149.
(*q*) C. A. 1862, ss. 95, 133; *In re Winterbottom*, 18 Q. B. D. 446; *In re Bassett*, 2 Man. 177.
(*r*) 53 & 54 Vict. c. 63.
(*s*) This is not retrospective: *In re School Board Election for Pulborough*, (1894) 1 Q. B. 725.

of Scotland or Ireland to sit and vote in that House;

(*b*) Being elected to, or sitting or voting in, the House of Commons, or on any committee thereof;

(*c*) Being appointed or acting as a justice of the peace;

(*d*) Being elected to or holding or exercising the office of mayor, alderman, or councillor;

(*e*) Being elected to or holding or exercising the office of guardian of the poor, overseer of the poor, member of a sanitary authority, or member of a school board, highway board, burial board, or select vestry (or a member of a county council: B. A. 1890, s. 9).

The above disqualifications shall be removed and cease if and when,—

(*a*) the adjudication of bankruptcy against the bankrupt is annulled; or

(*b*) he obtains from the Court his discharge with a certificate to the effect that his bankruptcy was caused by misfortune without any misconduct on his part.

Under sub-s. (*b*) misfortune and not mere absence of misconduct must be shown. Misfortune is "an adverse event not immediately dependent on the actions or will of him who suffers from it, and of so improbable a character that no prudent man would take it into his calculations in reference to the interests either of himself or of others" (*t*). The Court may grant or withhold such certificate as it thinks fit, but any refusal of such certificate shall be subject to appeal. The disqualifications imposed by this section extend to all parts of the United Kingdom (s. 32).

The annulment of an adjudication and the order of discharge will be dealt with hereafter (*u*).

By the B. A. 1890, s. 9, no disqualification is to exceed a period of five years from the date of any discharge granted under either the Act of 1883 or that of 1890.

Vacating of Seat in House of Commons.—If a member of the House of Commons is adjudged bankrupt, and the disqualifications arising therefrom under this Act are not removed within six months from the date of the order, the Court shall, immediately after the expiration of that time, S. 33.

(*t*) *In re Ld. Colin Campbell*, 20 Q. B. D. 816, per Fry, L. J., at p. 822.
(*u*) *Post*, pp. 64, 163.

CHAP. II.

certify the same to the Speaker of the House of Commons, and thereupon the seat of the member shall be vacant.

Where the seat of a member so becomes vacant, the Speaker, during a recess of the House, whether by prorogation or by adjournment, shall forthwith, after receiving the certificate, cause notice thereof to be published in the *London Gazette;* and after the expiration of six days after the publication shall (unless the House has met before that day, or will meet on the day of the issue), issue his warrant to the clerk of the Crown to make out a new writ for electing another member in the room of the member whose seat has so become vacant.

The Speaker for the time being may nominate certain persons, members of the House, to carry out the provisions just mentioned during the vacancy of the office of Speaker or during his absence out of the realm (s. 33).

S. 34.

Vacating of Municipal and other Offices.—If a person is adjudged bankrupt while holding the office of mayor, alderman, councillor, guardian, overseer, or member of a sanitary authority, school board, highway board, burial board, or select vestry, his office shall thereupon become vacant (s. 34), and this will now include a member of a county council (*x*).

(*x*) Cf. B. A. 1883, s. 32, and B. A. 1890, s. 9.

CHAPTER III.

PROCEEDINGS TO RECEIVING ORDER.

Acts of Bankruptcy.—A "receiving order" is a new term introduced by the Act. It does not divest a debtor of his property, but merely protects it (*a*). Before a receiving order can be made, a bankruptcy petition must be presented either by the debtor or by some creditor or creditors the amount of whose debt or debts is £50. Where the petition is presented by a creditor or creditors, it must be grounded on an act of bankruptcy (s. 5); and by s. 4:—

S. 5.

S. 4. Acts of bankruptcy.

"A debtor commits an act of bankruptcy in each of the following cases:—

(*a*) "If in England or elsewhere he makes a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally:

(*b*) "If in England or elsewhere he makes a fraudulent conveyance, gift, delivery, or transfer of his property, or of any part thereof:

(*c*) "If in England or elsewhere he makes any conveyance or transfer of his property or any part thereof, or creates any charge thereon which would under this or any other Act be void as a fraudulent preference if he were adjudged bankrupt [cf. s. 48]:

(*d*) "If with intent to defeat or delay his creditors he does any of the following things, namely, departs out of England, or being out of England remains out of England, or departs from his dwelling-house, or otherwise absents himself, or begins to keep house:

(*e*) "*If execution against him has been levied by seizure of his goods under process in an action in any Court, or in any civil proceeding in the High*

(*a*) *Rhodes* v. *Dawson*, 16 Q. B. D. 548.

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Court, and the goods have been either sold or held by the sheriff for twenty-one days.

"*Provided that, where an interpleader summons has been taken out in regard to the goods seized, the time elapsing between the date at which such summons is taken out and the date at which the sheriff is ordered to withdraw, or any interpleader issue ordered thereon is finally disposed of, shall not be taken into account in calculating such period of twenty-one days*" (*b*).

(*f*) "If he files in the Court a declaration of his inability to pay his debts or presents a bankruptcy petition against himself:

(*g*) "If a creditor has obtained a final judgment (*c*) against him for any amount, and execution thereon not having been stayed, has served on him in England or, by leave of the Court, elsewhere, a bankruptcy notice under this Act, requiring him to pay the judgment debt in accordance with the terms of the judgment, or to secure or compound for it to the satisfaction of the creditor or the Court, and he does not, within seven days after service of the notice, in case the service is effected in England, and in case the service is effected elsewhere, then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice, or satisfy the Court that he has a counter-claim, set-off, or cross demand which equals or exceeds the amount of the judgment debt, and which he could not set up in the action in which the judgment was obtained:

(*h*) "If the debtor gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts.

"A bankruptcy notice under this Act shall be in the prescribed form, and shall state the consequences of non-compliance therewith, and shall be served in the prescribed manner" (*d*).

(*b*) B. A. 1890, s. 1. Under the Act of 1883 this act of bankruptcy was limited to cases where there had been *seizure and sale* of the goods.

(*c*) See as to this, *post*, p. 41.

(*d*) See Rs. 136—142; and as to receiving order, see Rs. 176—183.

Another act of bankruptcy is contained in s. 103 (5), which is as follows:—

S. 103 (5). A further act of bankruptcy.

"Where, under s. 5 of the Debtors Act, 1869, application is made by a judgment creditor to a Court, having bankruptcy jurisdiction, for the committal of a judgment debtor, the Court may, if it thinks fit, decline to commit, and in lieu thereof, with the consent of the judgment creditor, and on payment by him of the prescribed fee, make a receiving order against the debtor. In such case the judgment debtor shall be deemed to have committed an act of bankruptcy at the time the order is made" (*e*). The bankruptcy under this section will be deemed to have relation back to and to commence at the time of the order, or if the bankrupt is proved to have committed any previous act of bankruptcy, then, at the time of the first of the acts of bankruptcy proved to have been committed by him within three months next preceding the date of the order (B. A. 1890, s. 20).

Assuming now an act of bankruptcy, the next question is, on what conditions a creditor may petition against the debtor. These are set out in s. 6, which runs thus:—

S. 6. Conditions on which creditor may petition.

"A creditor shall not be entitled to present a bankruptcy petition against a debtor unless—

(*a*) "The debt owing by the debtor to the petitioning creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to the several petitioning creditors, amounts to fifty pounds; and

(*b*) "The debt is a liquidated sum, payable either immediately or at some certain future time; and

(*c*) "The act of bankruptcy on which the petition is grounded has occurred within three months before the presentation of the petition; and

(*d*) "The debtor is domiciled in England, or, within a year before the date of the presentation of the petition, has ordinarily resided or had a dwelling-house or place of business in England" (*f*).

Where the petitioning creditor is secured.

If the petitioning creditor is a secured creditor (see *ante*, p. 3), he must, in his petition, either state that he is willing

(*e*) A foreigner in England is subject to this section: *In re Clark, Ex p. Clark* (1898), 1 Q. B. 20; *ante*, p. 16.

(*f*) As to foreigners, see *ante*, p. 15.

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to give up his security for the benefit of the creditors in the event of the debtor being adjudged a bankrupt, or give an estimate of the value of his security. In the latter case, he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him, after deducting the value so estimated in the same manner as if he were an unsecured creditor. The estimate made need not be a correct one, and in the event of an adjudication the trustee is not entitled to redeem the security at that estimate, unless the petitioning creditor in proving for voting purposes under Schedule I., or for dividend purposes under Schedule II., still retains that estimate (*g*).

Where the debtor resides out of England, the onus will be on the petitioning creditor to prove, if any dispute on the point should arise, that the debtor is domiciled in England, and this onus will not be discharged by showing that he bears an English name and is in the British army, as his domicile might be Scotch or Irish (*h*).

Debt must have existed at time of act of bankruptcy, but need not be "presently payable."

Under the late statute, and presumably under the present, the petitioning creditor's debt must have existed at the time of the act of bankruptcy (*i*); but if there was a good petitioning creditor's debt at that time it is immaterial that judgment has been subsequently obtained for it (*k*). It is not now necessary that the debt should be presently payable when the petition is presented (*l*), it being sufficient if it is payable either immediately or at some certain future time (*m*). Thus a creditor who has taken a bill for a debt may petition, if the debtor commits an act of bankruptcy, though the bill has not matured (*n*). The period within which after the act of bankruptcy the petition must be presented is limited to three months.

Before dealing further with the petition or the proceedings thereon, it will be well to consider in detail the several acts of bankruptcy set out in s. 4 (*ante*, p. 23).

I. *If in England or elsewhere he makes a conveyance or*

(*g*) *In re Vautin*, (1899) 2 Q. B. 549, not following on this point, *In re Taylor*, 13 Q. B. D. 128. R. 12 in Sch. II., as to redemption, refers to a valuation under R. 11 (*Ib.*).
(*h*) *Ex p. Cunningham*, 13 Q. B. D. 418; *Ex p. Barne*, 16 Q. B. D. 522.
(*i*) *Ex p. Hayward*, L. R. 6 Ch. 546.
(*k*) *In re King and Beesley*, (1895) 1 Q. B. 189.
(*l*) *Ex p. Sturt*, L. R. 13 Eq. 309.
(*m*) S. 6.
(*n*) *In re Raatz*, (1897) 2 Q. B. 81.

assignment of his property to a trustee or trustees for the benefit of his creditors generally.

The conveyance or assignment under this sub-section must be for the benefit of all the creditors, and not of a class, *e.g.*, trade creditors (*o*). It is not necessary to show an intent to defeat and delay creditors, for it has always been considered an act of bankruptcy where an insolvent person makes such an assignment, because it is an endeavour to put his property under a different course of application and distribution among his creditors from that which would take place under the bankrupt law (*p*). That law gives the management of his property to persons chosen by the creditors, and aims at an equal distribution of it, a result which would in many cases not be attained were the bankrupt allowed to make a favourite creditor his assignee. In this view the assignment would be a fraud on the other creditors (*q*).

There may be a conveyance or assignment of a debtor's property within this sub-section, although, so far as his *leaseholds* are concerned, he does not assign them, but merely covenants, in the ordinary way, to deal with them as the trustee shall direct (*r*). If the assignment includes the leaseholds, the trustee, of course, becomes assignee of them, and liable for the rent, and even where a bankruptcy petition presented within three months is followed by an adjudication, he is liable for the rent down to the adjudication, at all events, if, before it, proceedings are commenced against him, though the assignment as an act of bankruptcy would be void as *against a trustee in bankruptcy* (*s*).

The words "or elsewhere," which occur in this and the following sub-section, apply to the case of a person who is subject to the law of England making, whilst abroad, a conveyance or assignment of property which is to operate according to the law of England, and which will therefore affect only property in England; but a person domiciled abroad, and who is not subject to the law of this country, cannot be made bankrupt here by reason of some disposition

(*o*) *In re Phillips, Ex p. Barton*, (1900) 2 Q. B. 329.
(*p*) *Dutton* v. *Morrison*, 17 Ves. 199.
(*q*) *Worsley* v. *De Mattos*, 1 Burr. 467, 477.
(*r*) *In re Hughes*, (1893) 1 Q. B. 595.
(*s*) *Stein* v. *Pope*, (1902) 1 K. B. 595.

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of property which is executed in and which is to operate according to the law of a foreign country (*t*).

A creditor who has assented to an assignment for the benefit of creditors cannot, as a rule, take advantage of it as an act of bankruptcy (*u*), but he may do so if his assent thereto has been procured by misrepresentations on the part of the debtor as to the true state of his affairs (*x*), or if other creditors have secretly obtained an unfair advantage (*y*).

Now by the Deeds of Arrangement Act, 1887, all instruments made by, for, or in respect of the affairs of a debtor for the benefit of his "creditors generally" (which expression includes all creditors who may assent or take the benefit of such instruments), must be registered, and in default of such registration are void (*z*). But the Act does not repeal or affect any provision of the law for the time being in force in relation to bankruptcy, or give validity to any deed or instrument which by law is an act of bankruptcy or void or voidable (*a*): and so where a deed was neither registered nor stamped, and therefore void, it was nevertheless available to creditors as an act of bankruptcy (*b*).

If a deed is declared void as an act of bankruptcy, it would seem that a creditor cannot retain, as against the trustee in bankruptcy, a composition paid under the deed (*c*). On the other hand, where it is apparent from the deed that it is not intended to bind assenting creditors in case of bankruptcy, then, if the deed is declared void as an act of bankruptcy, the release in it is also void, and the assenting creditors may prove in the bankruptcy (*d*).

Where a trustee carries on the debtor's business, under a deed which has not been avoided as an act of bankruptcy, he has a lien on the property for the liabilities thereby

(*t*) *Ex p. Crispin*, L. R. 8 Ch. 374; *Cooke* v. *Vogeler Co.*, (1901) App. Cas. 102.

(*u*) *Ex p. Stray*, L. R. 2 Ch. 374; *In re Woodroof*, 4 Man. 46. Assent is, of course, a question of fact: *In re Day*, 50 W. R. 448.

(*x*) *In re Tanenberg*, 6 Mor. 49.

(*y*) *Ex p. Milner*, 15 Q. B. D. 605.

(*z*) 50 & 51 Vict. c. 57: see ss. 4, 5, 6, 19. This Act does not apply to a deed executed by a foreign debtor abroad: see *Dulancy* v. *Merry*, (1901) 1 K. B. 536. See *post*, p. 303.

(*a*) *Ib.* s. 17.

(*b*) *In re Hollinshead, Ex p. Heapy*, 37 W. R. 415.

(*c*) See *In re Jubb*, (1897) 1 Q. B. 641, 644.

(*d*) *In re Stephenson, Ex p. O. R.*, 20 Q. B. D. 540.

incurred by him, and a judgment creditor, though the judgment be in respect of one of such liabilities, cannot seize the trust goods (*e*).

II. *If in England or elsewhere he makes a fraudulent conveyance, gift, delivery, or transfer of his property, or of any part thereof.*

Fraudulent dispositions (to use a general word) of property under this paragraph, may be thus divided :—

(1) Dispositions of property fraudulent by common law :

(2) Dispositions of property fraudulent by 13 Eliz. c. 5 :

(3) Dispositions of property fraudulent by bankrupt law.

(1) and (2). For the present purpose the first two of these classes may be dealt with together. Indeed it may be said that the 13 Eliz. c. 5 is simply declaratory of the common law. At all events the Act is very general, and seems large enough to embrace every species of fraud on creditors. It seems to have defined more clearly the common law in frauds of this kind ; and Lord Mansfield, speaking a hundred years ago, says, " The principles and rules of the common law, as now universally known and understood, are so strong against fraud in every shape, that the common law would have attained every end proposed by the statute 13 Eliz. c. 5. . . . It cannot receive too liberal a construction or be too much extended in suppression of fraud " (*f*).

That Act " for the avoyding and abolysshing of faigned, covenous, and fraudulent feoffmentes, gyftes, grauntes, alienations, conveyances, bondes, suites, judgementes, and executiones, as well of landes and tenementes as of goodes and catels, more commonly used and practised in these dayes, then hathe ben seene or hard of heretofore," after reciting that such feoffments, &c., have been devised and contrived of malice, fraud, collusion, or guile, to the end, purpose, and with intent to delay, hinder, or defraud *creditors and others*, of their just and lawful actions, suits, debts, accounts, damages, &c., *declares, ordains, and enacts*, that every feoffment, &c., of lands, tenements, hereditaments, goods and chattels, or any of them, . . . and every bond, suit, judgment, and execution, made for any intent or

(*e*) *Jennings* v. *Mather*, (1901) 1 K. B. 108 ; (1902) 1 K. B. 1.

(*f*) *Cadogan* v. *Kennett*, Cowp. 434. See *Mackay* v. *Douglas*, L. R. 14 Eq. 106 ; *Taylor* v. *Coenen*, 1 Ch. D. 636 ; *In re Lane-Fox*, (1900) 2 Q. B. 509 ; *In re Holland*, (1902) 50 W. R. 575.

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purpose before expressed and declared, shall be, against that person, his heirs, executors, administrators, and assigns, whose actions, suits, &c., are or might be by such fraudulent proceedings, in any wise disturbed, hindered, delayed, or defrauded, *utterly void*. But the Act is not to extend to conveyances and assurances made *bonâ fide* and on good considerations; and so it will not necessarily apply to cases where the conveyance or assignment of property may amount to an act of bankruptcy, and be avoided under the bankruptcy laws if proceedings are taken within three months (*g*).

Assignment of the *whole* of a debtor's property for past debt.

(3) Dispositions of property, fraudulent by the bankrupt laws, may be either of the whole property of the debtor or of a part thereof. An assignment of the *whole* of a debtor's property to one or several creditors to the exclusion of others for past debts is a fraudulent assignment, because it prevents the other creditors from issuing execution (*h*). But the authorities establish, as a general rule, that where a sum of money is advanced on the faith of an agreement that an assignment (*e.g.*, by way of bill of sale) shall be made, the sum so advanced is to be treated as advanced on the credit of the assignment, and is not to be considered a past debt (*i*); but, in such a case, it will be for the Court to judge whether, under all the circumstances, the agreement was a *bonâ fide* one, or whether the giving of the bill of sale was purposely postponed in order to protect the grantor's credit, and the onus will lie on the person who sets up such prior agreement to prove its existence, show that it was in every respect *bonâ fide*, and give a satisfactory explanation of the reason why the giving of the bill of sale was delayed (*k*). If the agreement was made, not for the benefit of the creditor, but to enable the debtor to keep up a false credit, it will be invalid (*l*). Thus, where an advance of £55 was made to a trader on the security of bills of sale of all his goods and effects, which were valued at £600, and there was an agreement that the bills of sale should be from time to time renewed, so as to render it not necessary to register them, and the bills were accordingly renewed every nineteen

(*g*) *Ex p. Games*, 12 Ch. D. 314.
(*h*) *In re Wood*, L. R. 7 Ch. 302.
(*i*) *Ex p. Fisher*, L. R. 7 Ch. 636.
(*k*) *Ex p. Kilner*, 13 Ch. D. 245: cf. *Ex p. Hauxwell*, 23 Ch. D. 626.
(*l*) *Ex p. Fisher*, L. R. 7 Ch. 636

days (*m*), and this was done three times, and the trader then became bankrupt; it was held, that the last bill of sale was invalid, the transaction amounting in effect to an assignment of all the debtor's property for a past debt (*n*).

A *bonâ fide* sale will be good,

A fair and *bonâ fide* sale of the whole of a trader's property is not *of itself* an act of bankruptcy, the seller receiving the purchase-money by way of consideration, and the effect of the transaction being merely to change the nature of the property (*o*). But if the sale is intended by the seller to enable him to defeat or delay his creditors (*e.g.*, by absconding with the money), it will be an act of bankruptcy, but the purchaser, if innocent, will be protected by s. 49 (*p*). Where a debtor expecting an execution fraudulently turned his business into a one-man limited company, consisting really of himself, the consideration being, not cash, but shares and an undertaking by the company to pay his debts, the transaction was held an act of bankruptcy, and after an adjudication following a petition presented within three months, the trustee was held entitled to the assets of the company, notwithstanding that a resolution for voluntary winding up had been passed after the petition and before the receiving order, and the liquidator had collected the assets (*q*).

and so will a pledge for a present advance.

Again, a debtor may mortgage or pledge all his property by way of security for a present advance (*r*), and as in times of pressure a loan of a small amount may enable a trader to avoid stopping payment, and so enable him to pay all his creditors 20*s.* in the pound, the Court will not say that the smallness of the advance will make the transaction fraudulent as a matter of law (*s*).

Assignment of debtor's property *partly* for past debt, *partly* for present or future advances.

Next, can an assignment of the whole of the debtor's property, *partly* in consideration of a past debt, and *partly* in consideration of present or future advances, be upheld? It may be taken as settled that such a transaction is not *per se* an act of bankruptcy (*t*). In *Lomax* v. *Buxton*, it

(*m*) The Bills of Sale Act, 1854, required registration within 21 days.
(*n*) *Ex p. Cohen*, L. R. 7 Ch. 20.
(*o*) See *Baxter* v. *Pritchard*, 1 A. & E. 456; *Rose* v. *Haycock*, *Ib.* 460.
(*p*) *Shears* v. *Goddard*, (1896) 1 Q. B. 406; cf. *In re Jukes*, (1902) 2 K. B. 58.
(*q*) *In re Hirth*, (1899) 1 Q. B. 612. On the facts, s. 49 did not apply.
(*r*) *Whitwell* v. *Thompson*, 1 Esp. 67.
(*s*) *Bittlestone* v. *Cooke*, 6 E. & B. 296.
(*t*) *Mercer* v. *Peterson*, L. R. 3 Ex. 104; *Lomax* v. *Buxton*, L. R. 6 C. P. 107.

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was said in effect that an assignment of a debtor's property with a substantial exception, such as might enable him to carry on his business, would not by itself be an act of bankruptcy, and that a present advance might be considered on the same footing as a substantial exception. Of course, the amount of the present advance will be an important element in considering whether the transaction was an act of bankruptcy or not (*u*), but the real test is, Did the lender intend that the advance should enable the debtor to carry on his business, and had he a reasonable ground for believing that it would enable him to do so? (*x*).

Further advance need not be made at time of assignment in certain cases.

It is not absolutely necessary that the fresh or further advance should be made at the time that the assignment is executed, but to prevent the assignment of all a man's property for a past debt and further advances to be afterwards made from being an act of bankruptcy, there must be an *agreement* by the grantee to make such further advances, and the advances must afterwards have been made. The agreement, which, of course, must be *bonâ fide*, need not be embodied in the instrument of assignment, but may be by parol (*y*). Indeed, it is not necessary that the agreement should be technically binding at law or in equity, and a *bonâ fide* promise made of a further advance to enable the debtor to carry on his business will be sufficient (*z*). But it will not be sufficient that such further advances were in the contemplation of the parties at the date of the instrument of assignment, and were actually made afterwards, and that the deed was stamped so as to cover them (*a*).

Licences to seize after-acquired goods.

An assignment would not necessarily be invalidated by a clause enabling the assignee to seize all the debtor's property including that acquired by means of the advance made. *Graham* v. *Chapman* (*b*) seems to suggest that an assignment of such a kind would necessarily be an act of

(*u*) *Ex p. Fisher*, L. R. 7 Ch. 636.
(*x*) *Ex p. Johnson, In re Chapman*, 26 Ch. D. 338, 346: cf. *Ex p. Chaplin, In re Sinclair*, 26 Ch. D. 319.
(*y*) *Ex p. Winder*, 1 Ch. D. 290; on app. *sub nom. Ex p. Sheen, Ib.* 560.
(*z*) *Ex p. Wilkinson*, 22 Ch. D. 788.
(*a*) *Ex p. Dann*, 17 Ch. D. 26.
(*b*) 12 C. B. 85.

bankruptcy, but if the case decides that, it must now be considered as overruled (*c*).

If the debtor should become bankrupt and get his discharge, a person, who before the bankruptcy obtained a licence to seize after-acquired goods, cannot seize goods acquired by the debtor since the discharge, for the debt being gone the licence falls with it (*d*).

Assignment of after-acquired goods.

Generally, instead of giving a licence to seize after-acquired goods, the debtor purports to assign them. Properly speaking, goods to be afterwards acquired cannot be assigned, but, in *equity*, where a man purports to assign them, they will, if they are specific and capable of being identified, pass to the grantee immediately on being acquired (*e*). But, even then, as the grantee gets only an equitable title, if the grantor, before such grantee takes possession of the goods, executes a legal assignment of them to another person, that person will be preferred if he has had no notice of the prior equitable title (*f*). Further, if the grantor should become bankrupt before the grantee has taken possession of the goods, the latter's title to them may be affected by the doctrine of reputed ownership (see pp. 73, 79).

Book debts.

An assignment of book debts to which the assignor may hereafter become entitled is sufficiently specific, and, not being within the Bills of Sale Acts, will be valid against a trustee in bankruptcy, provided of course due notice of the assignment be given by the assignee to the debtors (*g*). So also an assignment of money to which the assignor may become entitled under any will has been held to be sufficiently specific to be enforced (*h*).

How far affected by Bills of Sale Act, 1882.

The above statements as to licences to seize, and assignments of, after-acquired *goods* must now be read in connection with the Bills of Sale Act, 1882, by s. 5 of which it is enacted, that, subject to certain qualifications, a document coming under the description of a "bill of sale" and being

(*c*) *Ex p. Hauxwell*, 23 Ch. D. 626. See also *Hutton* v. *Crutwell*, 1 E. & B. 15; *Bittlestone* v. *Cooke*, 6 E. & B. 296; *Lomax* v. *Buxton*, L. R. 6 C. P. 107: cf. now Bills of Sale Act, 1882, s. 5, *post*, pp. 106, 319.

(*d*) *Cole* v. *Kernot*, L. R. 7 Q. B. 534.

(*e*) *Tailby* v. *Official Receiver*, 13 App. Cas. 523; *In re Clarke*, 36 Ch. D. 348; *Lazarus* v. *Andrade*, 5 C. P. D. 318; *Collyer* v. *Isaacs*, 19 Ch. D. 342; *Clements* v. *Mathews*, 11 Q. B. D. 808.

(*f*) *Joseph* v. *Lyons*, 15 Q. B. D. 280; *Hallas* v. *Robinson*, *Ib.* 288.

(*g*) *Tailby* v. *Official Receiver*, *sup.*

(*h*) *In re Clarke*, *sup.*

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subject to that Act shall be void, *except as against the grantor*, in respect of any "personal chattels" specifically described in the schedule thereto, of which the grantor was not the true owner at the time of the execution of the bill of sale (*i*). If a bill of sale purports to assign, in the body of the instrument, after-acquired chattels by way of security, it will be void altogether as not being in accordance with the form prescribed by the Act of 1882 (*k*).

Assignment of *part* of a debtor's property.

It is obvious that there is a great difference between the assignment of the whole and of a *part* of a debtor's property for a past debt. But even where part only of the property is assigned, the transaction may amount to an act of bankruptcy, as being fraudulent against creditors. If the debtor has other property of a substantial amount, whereby he can carry on his business as usual, the assignment of a portion may be good (*l*); but if it is clear, on the whole, that the debtor, at the time of the assignment, was insolvent, and that a fraud on the creditors was intended, the assignment will be invalid. Thus, in *Ex parte Pearson* (*m*), P. recovered judgment for £79 from a trader, and on August 8, lodged an execution with the sheriff, who seized six of the debtor's horses, and on August 11, before any sale by the sheriff, the debtor agreed with P. to sell him the six horses for the amount of the debt and the sheriff's charges. P. accordingly withdrew the execution, but left the horses in the debtor's stables, and signed an agreement to let the debtor have the use of them for so much a day, and afterwards, on August 15 (on which day the debtor filed a petition for liquidation), removed them, and sold them for about the same price as he gave. The debtor was insolvent at the time of the agreement, and it was held, on the trustee's claiming the price of the horses from P., that the sale to him, having been made for the purpose of avoiding a sale by the sheriff, was a fraudulent transfer, and was void against the creditors.

(*i*) 45 & 46 Vict. c. 43. See also ss. 3, 4, 6, and 9.

(*k*) *Thomas* v. *Kelly*, 13 App. Cas. 506; and so too if it gives a "licence to seize" any chattels; see *post*, p. 111.

(*l*) *Young* v. *Waud*, 8 Ex. 221. But, *semble*, an assignment by a trader (for a past debt) of his business, together with plant, fixtures, and everything connected with it, so that he can no longer carry it on, is an assignment of substantially all his property, though he has other assets of small value: *In re Rayment*, 6 Man. 288.

(*m*) L. R. 8 Ch. 667.

III. *If in England or elsewhere he makes any conveyance or transfer of his property, or any part thereof, or creates any charge thereon, which would under this or any other Act be void as a fraudulent preference if he were adjudged bankrupt.*

Fraudulent preference will be discussed elsewhere (*n*).

IV. *If with intent to defeat or delay his creditors, he does any of the following things, namely, departs out of England; or, being out of England, remains out of England; or, departs from his dwelling-house, or otherwise absents himself; or begins to keep house.*

As to these acts of bankruptcy, an intent to defeat or delay creditors must be shown, and such intent is often a matter of inference. Thus, if a man quits England or remains out of England and provides no funds to meet bills becoming due, it may generally be assumed that his intention is to delay his creditors (*o*). But of course this may not be so where the debtor's permanent home is abroad (*p*). Again, a married woman trader, who leaves her place of business, without paying her creditors, or notifying her change of address, commits an act of bankruptcy, though at her husband's request she goes to live with him elsewhere (*q*). The usual evidence of beginning to keep house is, that a debtor has given orders that he is to be denied to creditors or others, and a creditor is in consequence denied. But an explanation of the denial may be given, as, for instance, that the creditor called at an unseasonable hour (*r*).

V. *If execution against him has been levied by seizure of his goods under process in an action in any Court, or in any civil proceeding in the High Court, and the goods have been either sold or held by the sheriff for* 21 *days.*

Provided that, where an interpleader summons has been taken out in regard to the goods seized, the time elapsing between the date at which such summons is taken out and the date at which the sheriff is ordered to withdraw, or any interpleader issue ordered thereon is finally disposed of, shall not be taken into account in calculating such period of 21 *days* (B. A. 1890, s. 1).

(*n*) See s. 48, *post*, p. 86.
(*o*) *Ex p. Kilner*, 2 Dea. 324; see also *In re Woolstenholme*, 4 Mor. 258.
(*p*) *Ex p. Brandon, In re Trench*, 25 Ch. D. 500.
(*q*) *In re Worsley*, (1901) 1 K. B. 309.
(*r*) *Ex p. Hall*, 1 Atk. 202.

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This act of bankruptcy differs from the corresponding one in the Act of 1883 by being extended to cases where the goods are not sold, but where the sheriff has been in possession for 21 days (*s*).

The duties of a sheriff as to goods taken in execution are so closely connected with this subject that it will be convenient to consider them here.

S. 145.
Sales under executions to be public.

First, where the sheriff sells the goods of a debtor under an execution for a sum exceeding twenty pounds (including legal incidental expenses), the sale must, unless the Court from which the process issued otherwise orders, be made by public auction, and not by bill of sale or private contract, and must be publicly advertised by the sheriff on and during three days next preceding the day of sale (*t*).

But if the sheriff has notice of another execution or other executions, the Court will not consider an application for leave to sell privately until notice has been given to the other execution creditor or creditors, who may appear and be heard upon the application (B. A. 1890, s. 12) (*u*).

S. 146.
Writ of *elegit* not to extend to goods.

Secondly, by s. 146 the sheriff can no longer deliver goods under a writ of *elegit*, and the issue of writs of *levari facias* in civil proceedings is by the same section forbidden.

Thirdly, s. 11 of the B. A. 1890, points out the sheriff's duties, when after seizure and before sale of goods, or the completion of the execution by the receipt or recovery of the full amount of the levy, he receives notice of a receiving order against the debtor, or when the sale is under an execution in respect of a judgment for a sum exceeding £20, or money is paid to avoid sale. By that section:—

Duties of sheriff as to goods taken in execution.

(1) "Where any goods of a debtor are taken in execution and before the sale thereof, or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the sheriff that a receiving order has been made against the debtor, the sheriff, shall, on request, deliver the goods and any money seized or received in part satisfaction of the execution to the official receiver, but the

(*s*) The 21 days are exclusive of the day of seizure: *In re North*, (1895) 2 Q. B. 264. A petition must be presented within 3 months of the completion of the 21 days, though the sheriff remains longer in possession: *In re Beeston*, (1899) 1 Q. B. 626.

(*t*) S. 145. But a private sale without leave is not necessarily void, at least outside bankruptcy: *Crawshaw* v. *Harrison*, 1 Man. 407.

(*u*) R. S. C., O. 43, rs. 8—15, *post*, p. 262.

costs of the execution shall be a first charge on the goods or money so delivered, and the official receiver or trustee may sell the goods, or an adequate part thereof, for the purpose of satisfying the charge (*x*).

(2) "Where under an execution in respect of a judgment for a sum *exceeding* £20, the goods of a debtor are sold or money is paid in order to avoid sale, the sheriff shall deduct his costs of the execution from the proceeds of sale or the money paid, and retain the balance for 14 days, and if within that time notice is served on him of a bankruptcy petition having been presented against or by the debtor, and a receiving order is made against the debtor thereon or on any other petition of which the sheriff has notice, the sheriff shall pay the balance to the official receiver or, as the case may be, to the trustee, who shall be entitled to retain the same as against the execution creditor" (B. A. 1890, s. 11) (*y*).

(3) And by s. 46 (3) of the B. A. 1883, "an execution levied by seizure and sale on the goods of a debtor is not invalid by reason only of its being an act of bankruptcy, and the person who purchases the goods in good faith under a sale by the sheriff shall in all cases acquire a good title to them against the trustee in bankruptcy."

Sub-s. 1 is applicable where the sale *has not taken place*, and the execution has not been completed by the receipt or recovery of the full amount of the levy, whatever the amount of the judgment may be, and sub-s. 2 where a sale *has taken place*, or money has been paid to avoid such sale, and where the execution is in respect of a judgment for a sum exceeding £20. Suppose the amount of the judgment is £18, but the sheriff, in order to pay himself the costs of the execution, levies for an amount exceeding

(*x*) Where goods are seized by the sheriff and claimed by a bill of sale holder, but not claimed by the official receiver under this sub-section, and their value is less or probably less than the sum secured by the bill of sale, a judge at chambers will not order a sale under O. 57, r. 12, unless the official receiver or the execution creditor give a guarantee against loss: *Stern* v. *Tegner*, (1898) 1 Q. B. 37. *Semble*, if the O. R. claims the goods, O. 57 does not apply (*Ib.*). Where there is no request by the official receiver for the delivery to him of goods seized, the trustee cannot afterwards complain that the sheriff sold: *Woolford's Trustee* v. *Levy*, (1892) 1 Q. B. 772. Where there is, the sheriff cannot get poundage: *In re Thomas*, (1899) 1 Q. B. 460.

(*y*) An "administration order" under s. 125 is not for the purposes of this section equivalent to a "receiving order": *Hasluck* v. *Clark*, (1899) 1 Q. B. 699; cf. *Watkins* v. *Barnard*, (1897) 2 Q. B. 521.

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£20, will sub-s. 2 in such a case apply? Or may he at once pay over the £18, if in hand, to the execution creditor? Looking at the corresponding section (87) of the Act of 1869 (where the amount was "a sum exceeding £50"), and the decisions thereon, it is assumed that in such a case he must, by sub-s. 2, retain the balance for the 14 days.

That section was held to apply to a case where the sum for which the sheriff levied, including the costs of execution, exceeded £50, though the judgment debt by itself did not exceed that amount (*z*). Probably a similar construction would be put on s. 11, sub-s. 2, of the B. A. 1890.

The period of 14 days during which the sheriff must hold the proceeds of the goods sold commences to run from the date of the sale, and not from the date when the proceeds of sale are received by him (*a*).

Sub-s. 2 above was held inapplicable where the sheriff had gone out of possession under an arrangement to re-enter, and the debtor's father paid money to prevent re-seizure, because (1) the money was not paid *under an execution*, (2) it was not paid to avoid a *sale* but *seizure*, and (3) it was not the debtor's money (*b*). Nor again was the sub-section applicable where a firm's goods were seized and sold under an execution, and within 14 days of the sale a receiving order was made against *one* partner (*c*).

Further, where a payment on account was made by the debtor, not to the sheriff, but to the execution creditor, and the sheriff withdrew with liberty to re-enter for the balance, s. 11 was held inapplicable; but the payment was invalid against the trustee in bankruptcy under s. 45, as the execution had not been *completed* (*d*).

A landlord's right, according to the practice under 8 Anne, c. 14 (or 18), to be paid one year's arrears of rent out of the proceeds of sale in the hands of the sheriff, is not affected by this sub-section (*e*).

It was held under s. 87 of the Act of 1869 that if the

(*z*) *Ex p. Liverpool Loan Co.*, L. R. 7 Ch. 732.
(*a*) *In re Cripps, Ross & Co.*, 21 Q. B. D. 472. R. 90 does not apply to service of notice on sheriff: *Lole* v. *Betteridge*, (1898) 1 Q. B. 256.
(*b*) *Bower* v. *Hett*, (1895) 2 Q. B. 51; on app. 337. The Court of Appeal did not express an opinion on the last ground.
(*c*) *Dibb* v. *Brooke & Sons*, (1894) 1 Q. B. 338.
(*d*) *In re Ford, Ex p. O. R.*, (1900) 1 Q. B. 264; s. 45, *post*, p. 89.
(*e*) *In re Mackenzie*, (1899) 2 Q. B. 566.

sheriff received no notice of a petition within the 14 days, and consequently paid over the money to the execution creditor, the latter, if he had no notice of a prior available act of bankruptcy committed by the debtor, could not be compelled to hand it to the trustee if the debtor afterwards became bankrupt (*f*). But where a creditor issued a *second* execution against a trader for a debt above £50, and no notice having been given to the sheriff within 14 days, received the amount, and a bankruptcy petition, grounded on the first seizure and sale, was presented within six months thereof, the creditor was held not entitled to retain the proceeds of the second seizure and sale, inasmuch as when he received them he had notice of an act of bankruptcy (namely, the first seizure and sale), and the trustee's title related back to that act of bankruptcy (*g*). Under the present Act the bankruptcy of the debtor, and so the trustee's title, will relate back to and commence at the time of the act of bankruptcy being committed on which a receiving order is made against the debtor, or of the first act of bankruptcy within three months next preceding the presentation of the petition (s. 43). An execution levied against a debtor by seizure of his goods, if the same are sold or held by the sheriff for 21 days, is, as we have seen above (p. 35), an act of bankruptcy, and a creditor, by s. 45 (*post*, p. 89), is not allowed to retain the benefit of an execution, except both the seizure and the sale take place before the date of the receiving order, and before notice of the presentation of any bankruptcy petition or of the commission of any available (*h*) act of bankruptcy by the debtor: it would seem then to follow that an execution creditor who has received the proceeds of a second execution will not be allowed to retain them against the trustee if the debtor be adjudicated bankrupt on a petition presented within three months of the first execution levied on behalf of the creditor when such execution has been so levied by seizure and sale of the goods or by their retention by the sheriff for 21 days, that being (under s. 1 of B. A. 1890, *ante*, p. 35) an

(*f*) *Ex p. Villars*, L. R. 9 Ch. 439. This is still good law: s. 46 (3), *sup.*: cf. s. 11 (2) B. A. 1890, *ante*, p. 37.

(*g*) *Ex p. Dawes*, L. R. 19 Eq. 438.

(*h*) *I.e.*, committed within three months of the petition; s. 168, *ante*, p. 2.

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available act of bankruptcy, of which he has had notice. Again, if an execution has not been completed by sale or receipt of the amount of the levy before the sheriff has been in possession for 21 days, the execution creditor, though the sheriff has paid him the proceeds of the execution, after retention thereof for 14 days, may have his title thereto defeated by reason of the act of bankruptcy committed by the sheriff having held the goods for 21 days, of which act of bankruptcy the execution creditor will be deemed to have notice (*i*).

VI. *If he files in the Court a declaration of his inability to pay his debts, or presents a bankruptcy petition against himself.*

S. 95 (*ante*, p. 5) will show in what Court the declaration or the bankruptcy petition is to be filed.

VII. *If a creditor has obtained a final judgment against him for* any *amount and execution thereon not having been stayed, has served on him in England, or, by leave of the Court, elsewhere, a bankruptcy notice under this Act, requiring him to pay the judgment debt in accordance with the terms of the judgment, or to secure or compound for it to the satisfaction of the creditor or the Court, and he does not, within seven days after service of the notice, in case the service is effected in England, and in case the service is effected elsewhere, then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice, or satisfy the Court that he has a counterclaim, set-off, or cross demand which equals or exceeds the amount of the judgment debt, and which he could not set up in the action in which the judgment was obtained.*

Two or more judgment debts cannot be included in the same bankruptcy notice (*k*); but interest on the judgment debt may be included (*l*).

Any creditor may present a petition grounded on this act of bankruptcy (*m*): within, of course, three months; *e.g.*, if the bankruptcy notice be served on November 20,

(*i*) *Figg* v. *Moore*, (1894) 2 Q. B. 690; *Burns-Burns* (*Trustee of*) v. *Brown*, (1895) 1 Q. B. 324. *Semble*, the creditor's solicitor will also be deemed to have notice: *In re North*, 11 T. L. R. 304, and MS. note. As to time, see s. 141.

(*k*) *In re Low*, (1891) 1 Q. B. 147.

(*l*) *In re Lehmann*, 7 Mor. 181.

(*m*) *Ex p. Dearle*, 14 Q. B. D. 184.

the act of bankruptcy is complete at the last moment of November 27, and a creditor must present a petition not later than February 27 (*n*).

The executor of a creditor who has not obtained leave, under O. 42, r. 23, to issue execution on a judgment obtained by the testator, cannot serve a bankruptcy notice on the debtor (*o*). And if judgment has been obtained against a firm, a bankruptcy notice cannot be served on a member of it in respect of the judgment, if execution could not have issued against him without leave under O. 48a, r. 8, and no such leave has been obtained (*p*).

"A creditor who has obtained a final judgment" now means any person who is for the time being entitled to enforce a final judgment (*q*); and so decisions (*r*) that the assignee of a judgment debt and the trustee in bankruptcy of a judgment creditor could not respectively serve a bankruptcy notice on the judgment debtor are superseded.

A creditor who has *equitably* assigned the judgment debt may issue a bankruptcy notice (*s*), but he cannot present a petition without joining the assignee (*t*).

What is not a final judgment?

A creditor can serve a bankruptcy notice only when a *final* judgment has been obtained. A garnishee *order* absolute is not a "final judgment," and so non-compliance with it is not an act of bankruptcy (*u*). And a "balance order" made in the voluntary winding-up of a company on a contributory, for the payment of calls made upon him before the commencement of the winding-up, was held not to be a final judgment (*x*). So, too, where an action for specific performance was compromised, and an order was then made, by consent, that on the defendants paying the plaintiff's taxed costs, further proceedings should be stayed, and the costs were taxed, and another order was then made, that the defendants should pay them by a certain day, but such payment was not made, it was held that the order for

(*n*) *In re Maud*, 8 Mor. 144.
(*o*) *Ex p. Woodall*, 13 Q. B. D. 479; though made a party to the action under O. 17, r. 4: *In re Clements*, (1901) 1 Q. B. 260.
(*p*) *Ex p. Ide*, 17 Q. B. D. 755.
(*q*) B. A. 1890, s. 1.
(*r*) *Ex p. Blanchett*, 17 Q. B. D. 303; *Ex p. Harper*, 22 Q. B. D. 87.
(*s*) *In re Palmer, Ex p. Brims*, (1898) 1 Q. B. 419.
(*t*) *Ex p. Dearle*, 14 Q. B. D. 184.
(*u*) *Ex p. Chinery*, 12 Q. B. D. 342.
(*x*) *Ex p. Whinney, In re Sanders*, 13 Q. B. D. 476; *Ex p. Grimwade*, 17 Q. B. D. 357.

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payment was not a final judgment (*y*). Neither is an order for the payment of alimony *pendente lite* (*z*), nor an order for the payment of costs by a co-respondent in divorce (*a*), nor an order dismissing an action for want of prosecution (*b*), nor an order made on a motion in bankruptcy (*c*), or on a petition to revoke a patent (*d*), nor a decreet of the Scotch Court of Session though a certificate of it be registered here (*e*), a "final judgment."

Final judgment.

But where plaintiff obtained judgment against defendant, dissolving a partnership, ordering an inquiry as to damages (which were to be paid within fourteen days after the chief clerk's certificate), and directing that plaintiff's taxed costs should be paid by defendant, it was held that the order for the payment of the costs was a final judgment, and that, after the taxation, a bankruptcy notice might be served in respect of it, though the inquiry as to damages was not prosecuted (*f*). Again, where A., having got an interlocutory order against B. for costs, sued B. thereon, and obtained judgment for the taxed amount of the costs, he was held entitled to serve a bankruptcy notice (*g*). An order for payment of money made under s. 10 of the Companies (Winding-up) Act, 1890, is to be deemed a final judgment (*h*). A liquidator must issue a bankruptcy notice in the name of the company, but the notice may require the debtor to pay or compound for the debt to the liquidator's satisfaction (*i*).

Stay of execution.

The words "execution thereon not having been stayed" refer to a stay of execution *before* the service of the bankruptcy notice; and so, where a judgment creditor of the creditor, after the service of the bankruptcy notice, served on the debtor a garnishee order *nisi* in respect of the debt due to the creditor, that was held not to be a stay of execution, though the debtor might have shown by evidence that he was prevented by the act of his creditor from complying

(*y*) *Ex p. Schmitz*, 12 Q. B. D. 509.
(*z*) *Ex p. Henderson*, 20 Q. B. D. 509.
(*a*) *In re Binstead*, 9 Mor. 319.
(*b*) *Ex p. Strathmore*, 20 Q. B. D. 512.
(*c*) *In re A Bankruptcy Notice* (1), (1895) 1 Q. B. 609, which shows that the judgment must be obtained in an *action*.
(*d*) *In re Owen*, 8 Man. 24.
(*e*) *In re A Bankruptcy Notice* (2), (1898) 1 Q. B. 383.
(*f*) *Ex p. Moore*, 14 Q. B. D. 627.
(*g*) *In re Boyd*, (1895) 1 Q. B. 611.
(*h*) See 56 & 57 Vict. c. 58.
(*i*) *In re Murrieta*, 3 Man. 35.

with the notice, *e.g.*, by showing that he had money with which he would have paid the debt if the garnishee order had not been served on him (*k*). But after a garnishee order absolute has been served on a judgment debtor, execution on the judgment is stayed so long as the order remains undischarged and the creditor cannot serve a bankruptcy notice in respect of the judgment debt (*l*).

Where the creditor within the seven days obtained a charging order on shares belonging to the debtor, this was no ground for dismissing the notice, the debtor not having shown that the creditor's act prevented him from paying (*m*).

Where goods taken in execution under a judgment, sufficient to satisfy the judgment debt, are claimed by a third party, and an interpleader order is made under which the sheriff withdraws from possession, execution on the judgment is stayed within the meaning of the words above set out (*n*). But where the goods taken in execution are not equal in value to the amount of the judgment debt, and a similar interpleader order is made, execution is not stayed as to the balance of the judgment debt, after deducting the value of the goods so taken (*o*).

A bankruptcy notice must be in the prescribed form, and must state the consequences of non-compliance therewith, and be served in the prescribed manner (*p*). A strict compliance with the rules is more important in the case of a bankruptcy notice than in the case of a petition (*q*); but the Court has power to allow amendments (*r*). The notice should follow the judgment. Thus where the judgment was headed "H. and others, plaintiffs," a notice requiring the debtor to pay to "H. and others, trustees," was held bad (*s*). But a judgment against several persons jointly may be followed by a bankruptcy notice against one of them (*t*). If part of the judgment debt has been paid, the

(*k*) *Ex p. Dennis*, 37 W. R. 263.
(*l*) *In re Connan*, 20 Q. B. D. 690.
(*m*) *In re Sedgwick*, 5 Mor. 262.
(*n*) *Ex p. Ford*, 18 Q. B. D. 369.
(*o*) *In re Bates*, 4 Mor. 192: cf. *In re Follows*, (1895) 2 Q. B. 521, which shows that the issue of an interpleader summons is a stay. As to return by sheriff, see *In re A Debtor*, (1902) 2 K. B. 260, *ante*, *Add.*
(*p*) S. 4 (2): Rs. 136—142.
(*q*) *In re Collier*, 8 Mor. 80.
(*r*) See and cf. *In re Bates*, 4 Mor. 192; *In re Miller*, 10 Mor. 183.
(*s*) *In re Howes*, (1892) 2 Q. B. 628.
(*t*) *In re Low, Ex p. Gibson*, (1895) 1 Q. B. 734. See *In re Wenham*, (1900) 2 Q. B. 698.

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notice should only require payment of the balance (*u*). The alternatives open to a debtor served with a bankruptcy notice are,—either to comply with it, or to satisfy the Court that he has a counter-claim, set-off, or cross demand, equalling or exceeding the amount of the judgment debt, which he could not set up in the action in which the judgment was obtained. The debtor cannot ask the Court to go behind the judgment when he applies to set aside the notice, though he may do so on the hearing of the petition (*x*).

Though by the leave of the Court a bankruptcy notice may be served on a debtor out of England, no such notice can be served on a *foreigner* out of the jurisdiction (*y*), but it may be served on him in England, even where a petition cannot be presented against him (*z*).

Arrest of debtor.

The Court may order a debtor to be arrested under the following circumstances, *inter alia*, that is to say:—"If *after a bankruptcy notice has been issued* under this Act, or after presentation of a bankruptcy petition by or against him, it appears to the Court that there is probable reason for believing that he *has absconded*, or (*a*) is about to abscond with a view of avoiding payment of the debt in respect of which the bankruptcy notice was issued, or of avoiding service of a bankruptcy petition, or of avoiding appearance to any such petition, or of avoiding examination in respect of his affairs, or of otherwise avoiding, delaying or embarrassing proceedings in bankruptcy against him" (*b*).

VIII. *If the debtor gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts.*

This notice need not, to constitute an act of bankruptcy, be in writing (*c*), but it must be given formally and deliberately, and a mere casual conversation will not amount to a notice of suspension of payment (*d*).

(*u*) *In re Child*, 9 Mor. 103.

(*x*) *In re Easton*, 10 Mor. 111. An adjournment will not be granted unless debtor shows ground for setting aside notice: *In re Cole*, (1898) 1 Q. B. 290.

(*y*) *In re Pearson, Ex p. P.*, (1892) 2 Q. B. 263; *Cooke* v. *Vogeler Co.*, (1901) A. C. 102.

(*z*) *In re Clark, Ex p. Beyer*, 3 Man. 203: see *ante*, p. 25.

(*a*) Added by the B. A. 1890, s. 7. The absconding need not be after the b. n. or petition: *Reg.* v. *Judge of Northallerton C. C.*, (1898) 2 Q. B. 650; in H. of L. *sub nom. Skinner* v. *Judge of N. C. Court*, (1899) App. Cas. 439.

(*b*) S. 25 (*a*). See *post*, p. 132.

(*c*) *Ex p. Nickoll*, 13 Q. B. D. 469; *In re Miller*, (1901) 1 Q. B. 51.

(*d*) *Ex p. Oastler*, 13 Q. B. D. 471.

The decisions under this sub-section being mainly decisions on the construction of words, are difficult to reconcile, and need not be discussed in detail. A statement that a man is unable to pay his debts in full might not, *per se*, amount to an act of bankruptcy under the sub-section (*e*). But as to whether a notice amounts to an act of bankruptcy under this sub-section, the true test seems to be, What effect would the notice produce on the mind of the creditor receiving it as to the intention of the debtor with regard to his creditors? (*f*). There may be an act of bankruptcy though the suspension indicated in the notice is only temporary (*f*): and, in most cases, where a debtor, by circular, summons his creditors to a meeting to consider his affairs, he thereby gives notice that he will not, in the meantime, pay any individual creditor (*g*). If the debtor offers a composition to his creditors, the refusal of which would only leave him suspension of payment as an alternative, such a notice would be within the sub-section (*f*).

Though the notice be given "without prejudice," it is admissible as proof of the act of bankruptcy (*h*).

The Petition.—The several acts of bankruptcy having been now dealt with, the petition will next occupy our attention. And first, it will be well to refer to the provisions contained in ss. 7 and 8 respectively, as to proceedings on a petition presented by a creditor or by the debtor.

S. 7.

Proceedings and order on *creditor's* petition.

A *creditor's* petition is to be verified by affidavit of the creditor, or of some person on his behalf having knowledge of the facts, and served in the prescribed manner.

At the hearing the Court is to require proof of the *debt* of the petitioning creditor, of the *service* of the petition, and of the *act of bankruptcy*, or, if more than one act of bankruptcy is alleged in the petition, of some one of the alleged acts of bankruptcy, and, if satisfied with the proof, may make a receiving order in pursuance of the petition. The debtor may, if necessary, be called, and his books put in evidence, to support the petition (*i*).

(*e*) *Ex p. Oastler, sup.; In re Walsh*, 52 L. T. 694 : cf. *Crook* v. *Morley, inf.*

(*f*) See *Crook* v. *Morley*, (1891) App. Cas. 316 ; *In re Simonson*, (1894) 1 Q. B. 433 ; *In re Waite*, 1 Man. 512 : *In re Wolstenholme*, 2 Mor. 213 ; *In re Lamb*, 4 Mor. 25 ; *In re Phillips*, 76 L. T. 531 ; *In re Miller, sup.*

(*g*) See *In re Simonson, sup.; In re Scott*, (1896) 1 Q. B. 619 ; *In re Dagnall*, (1896) 2 Q. B. 407.

(*h*) *In re Daintrey*, (1893) 2 Q. B. 116.

(*i*) *In re X. Y.*, (1902) 1 K. B. 98.

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If the Court is not satisfied with the proof of the petitioning creditor's debt, or of the act of bankruptcy, or of the service of the petition, or is satisfied by the debtor that he is able to pay his debts, or that for other *sufficient cause* no order ought to be made, the Court may dismiss the petition.

Sufficient cause.

What is sufficient cause will depend on the circumstances of each case. It is not sufficient cause that there will probably be no assets to distribute (*k*); or that the costs will probably exhaust the assets (*l*). But sufficient cause was found where the Court was satisfied, apart from the debtor's evidence, that the debtor's *sole* asset (with which he had proposed to pay a composition to his creditors) would be destroyed by his bankruptcy (*m*); and again, where the debtor was already an undischarged bankrupt, whose estate had paid but a small dividend, and it was clearly shown that there were no assets existing, or likely to come into existence, which would be available for the creditors in a second bankruptcy (*n*).

Judgment debt.

The Court at the hearing of the petition may, in a proper case, inquire into the consideration of a judgment debt, and, if not satisfied with it, refuse to make a receiving order, but it has no power to set aside the judgment (*o*).

Petition not *bonâ fide*.

A petition presented not with the *bonâ fide* view of obtaining a receiving order, but for a collateral purpose, may be dismissed, though there be a good debt and an available act of bankruptcy (*p*). However, a mere bye-motive, without fraud, will not necessarily be a ground for dismissal (*q*).

Stay.

When the act of bankruptcy relied on is non-compliance with a bankruptcy notice to pay, secure, or compound for a judgment debt, the Court may, if it thinks fit, stay or dismiss the petition on the ground that an appeal is pending from the judgment, but the mere fact that such appeal is

(*k*) *In re Leonard*, (1896) 1 Q. B. 473; *In re Birkin*, 3 Man. 291.

(*l*) *In re Jubb*, (1897) 1 Q. B. 641.

(*m*) *In re Otway*, (1895) 1 Q. B. 812. In this case, too, the petitioning creditor had improperly extorted costs from the debtor.

(*n*) *In re Betts*, (1897) 1 Q. B. 50. The petitioning creditor was also a creditor under the first bankruptcy.

(*o*) See *Ex p. Lennox*, 16 Q. B. D. 315; *In re Vitoria*, (1894) 2 Q. B. 387; *In re Hawkins, Ex p. Troup*, (1895) 1 Q. B. 404.

(*p*) See and cf. *Ex p. Griffin*, 12 Ch. D. 480; *In re Baker*, 36 W. R. 558. As to extortion, see *In re Bebro*, (1900) 2 Q. B. 316.

(*q*) *King* v. *Henderson*, (1898) App. Cas. 720: cf. *In re Shaw*, 83 L. T. 754.

pending is not a sufficient ground for staying proceedings, and the debtor must show that the judgment was obtained by fraud or collusion, or a miscarriage of justice (*r*).

Where the debtor appears on the petition, and denies that he is indebted to the petitioner, or that he is indebted to such an amount as would justify the petitioner in presenting a petition against him, the Court, on such security (if any) being given as the Court may require for payment to the petitioner of any debt which may be established against him in due course of law, and of the costs of establishing the debt, may, instead of dismissing the petition, stay all proceedings on the petition for such time as may be required for the trial of the question relating to the debt.

When proceedings are stayed, the Court may, if by reason of the delay caused by such stay or for any other cause it thinks just, make a receiving order on the petition of some other creditor, and shall thereupon dismiss, on such terms as it thinks just, the prior petition.

Neither a *creditor's* nor a *debtor's* petition can, after presentment, be withdrawn without leave (*s*). The Court should be satisfied that there is a proper case for the withdrawal of a creditor's petition (*t*).

S. 8.

Proceedings and order on *debtor's* petition.

A *debtor's* petition shall allege that the debtor is unable to pay his debts, and the presentation thereof shall be deemed an act of bankruptcy without the previous filing by the debtor of any declaration of inability to pay his debts, and the Court shall thereupon make a receiving order (s. 8). The petition of a professional bankrupt, *e.g.*, one who is in the habit of presenting petitions so as to evade committal orders, may be dismissed (*u*).

Consolidation of petitions.

Where two or more bankruptcy petitions are presented against the same debtor or against joint debtors, the Court may consolidate the proceedings (*x*).

Power to change carriage of proceedings.

Where the petitioner does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor who has a debt of £50 (s. 107) : but where the petition has been dismissed, the application to the

(*r*) *In re Flatau*, 22 Q. B. D. 83 ; *Ex p. Ball*, 38 W. R. 52.
(*s*) Ss. 7, 8 : Rs. 143—169.
(*t*) *In re Bebro*, (1900) 2 Q. B. 316.
(*u*) *In re Betts, Ex p. O. R.*, (1901) 2 K. B. 39.
(*x*) S. 106 : see *In re Abbott*, (1894) 1 Q. B. 442.

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Court for an order of substitution should be made within three months of the act of bankruptcy (*y*).

Continuance of proceedings on death of debtor.

If a debtor by or against whom a petition has been presented dies, the proceedings shall, unless the Court otherwise orders, be continued as if he were alive (s. 108). Thus where a petitioning debtor died before his creditors passed any resolution, the Court adjudged him bankrupt (*z*).

And now where a debtor dies before service of a petition which has been filed against him, the Court may order service to be effected on his personal representative, or on such other persons as he thinks fit (R. 156A).

Power to stay proceedings.

The Court may at any time, for sufficient reason, stay the proceedings under a petition, either altogether or for a limited time, on such terms and subject to such conditions as the Court may think just (s. 109).

S. 10.

Discretionary powers as to appointment of receiver and stay of proceedings.

Powers of the Court, after Presentation of Petition. —The Court may, if it is shown to be necessary for the protection of the estate, at any time after the presentation of a petition, and before a receiving order is made, appoint the official receiver to be *interim receiver* of the property of the debtor, or of any part thereof, and direct him to take immediate possession thereof or of any part thereof.

The Court may at any time after the presentation of a petition stay any action, execution, or other legal process against the property or person of the debtor, and any Court in which proceedings are pending against a debtor may, on proof that a petition has been presented by or against the debtor, either stay the proceedings or allow them to continue on such terms as it may think just (*a*).

S. 11.

Service of order staying proceedings.

The order to stay proceedings may be served by sending a sealed copy thereof by prepaid post letter to the address for service of the plaintiff or other party prosecuting the proceedings (*b*).

S. 9.

Effect of receiving order.

Effect of Receiving Order.—This is shown by s. 9: "On the making of a receiving order (*c*) an official receiver shall be thereby constituted receiver of the property of the debtor,

(*y*) *In re Maugham*, 21 Q. B. D. 21 : see *In re Maund*, 11 T. L. R. 126.
(*z*) *Ex p. Sharp*, 34 W. R. 550
(*a*) S. 10 : see Rs. 170—175 : see *Add.*
(*b*) S. 11 : cf. R. 92 ; and s. 109.
(*c*) Though never drawn up : *Blount* v. *Whiteley*, 6 Man. 48.

and thereafter, except as directed by this Act, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the debtor in respect of the debt, or shall commence any action or other legal proceedings unless with the leave of the Court and on such terms as the Court may impose. But this section shall not affect the power of any secured creditor to realise or otherwise deal with his security in the same manner as he would have been entitled to realise or deal with it if this section had not been passed" (*d*).

S. 13. Advertisement of receiving order.

Notice of Receiving Order.—Notice of every receiving order, stating the name, address, and description of the debtor, the date of the order, the Court by which the order is made, and the date of the petition, is to be gazetted and advertised in a local paper as prescribed (s. 13; R. 182).

S. 12. Power to appoint special manager.

Special Manager.—The official receiver (*e*) may, on the application of a creditor, and if satisfied that the nature of the debtor's estate or business or the interests of the creditors generally require the appointment of a special manager of the estate or business other than the official receiver, appoint a manager thereof accordingly to act until a trustee is appointed, and with such powers (including any of the powers of a receiver) as may be entrusted to him by the official receiver. The special manager must give security and account as the Board of Trade may direct, and he will receive such remuneration as the creditors may, by resolution at an ordinary meeting, determine, or, in default of any such resolution, as may be prescribed (*f*). Where a special manager is not appointed the official receiver is to act as manager (s. 70) (*a*), *post*, p. 157), and the Court will not interfere with the discretion of the official receiver in refusing to appoint one (*g*).

Where the official receiver, as *interim* receiver, appointed a special manager, and the petition was afterwards dismissed, the debtors being foreigners, it was held that the special manager could not be regarded as a trespasser, and was entitled to be paid his remuneration and expenses out

(*d*) S. 9. See *ante*, p. 23.
(*e*) Even when only *interim* receiver: *In re A Bankruptcy Petition*, 7 Man. 132.
(*f*) S. 12: cf. Rs. 38—46, 125, 331, 342—344.
(*g*) *In re Whittaker*, 50 L. T. 510.

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of the receipts of the business carried on by him up to the dismissal (*h*).

S. 14.

Power of Court to annul receiving order in certain cases.

Annulment of Receiving Order.—(1) To prevent conflicts with the Irish and Scotch Courts, s. 14 enacts that "if in any case where a receiving order has been made on a bankruptcy petition it shall appear to the Court by which such order was made, upon an application by the official receiver, or any creditor or other person interested, that a majority of the creditors in number and value are resident in Scotland or in Ireland, and that from the situation of the property of the debtor, or other causes, his estate and effects ought to be distributed among the creditors under the Bankrupt or Insolvent Laws of Scotland or Ireland, the said Court, after such inquiry as to it shall seem fit, may rescind the receiving order and stay all proceedings on, or dismiss the petition upon such terms, if any, as the Court may think fit.

But the fact that debtors have been made bankrupt in a foreign country, which is not their country of domicil, is no ground for staying proceedings on a receiving order rightly made against them in this country (*i*).

(2) A receiving order will also be rescinded or annulled where the Court sanctions a composition or scheme under s. 3 of B. A. 1890 (see R. 208).

(3) A receiving order may be rescinded or annulled if it ought not to have been made (*k*), or (4) if the debtor or his friends pay the creditors in full (*l*).

But if the debts are not paid in full, and there are no objections to the validity of the receiving order, it will not be enough for the debtor to get the assents of his creditors, and then ask the Court to rescind the receiving order, for the proper course in such a case is to propose a composition or scheme of arrangement under s. 3 of B. A. 1890 (*post*, p. 56). The Court, no doubt, may, in its discretion, where the debtor has not been guilty of misconduct, rescind the receiving order under such circumstances, but in exercising its discretion it will consider the interests, not

(*h*) *In re A. B. & Co.* (No. 2), (1900) 2 Q. B. 429.
(*i*) *In re Artola Hermanos*, 24 Q. B. D. 640.
(*k*) See *In re Hester*, 22 Q. B. D. 632; see also *In re Leslie*, 18 Q. B. D. 619; *In re Dixon and Cardus*, 5 Mor. 291, decisions under repealed s. 18; *In re Flatau, Ex. p. O. R.*, (1893) 2 Q. B. 219; ss. 35 and 104.
(*l*) *Ex p. Wemyss*, 13 Q. B. D. 244.

only of the creditors, but of the commercial public, and require the debtor to show conclusive reasons for not following the ordinary procedure under the Acts (*m*).

Notice of an application to rescind a receiving order or annul an adjudication must be served on the official receiver (R. 134B).

(*m*) See cases in note (*k*), and *In re Izod*, (1898) 1 Q. B. 241, where the Court of Appeal (Rigby, L. J., dissenting) approved the rescission of the receiving order. There the debtor had passed a preliminary examination before the official receiver, who suggested no misconduct, and the debtor's father paid the creditors 10*s.* in the £, which was more than the assets would realise.

CHAPTER IV.

PROCEEDINGS AFTER RECEIVING ORDER.

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A RECEIVING order having now been made against the debtor, one of three courses may be followed: (1) the creditors may accept a composition or scheme of arrangement without the debtor being adjudicated bankrupt: (2) the debtor may be adjudicated bankrupt: (3) the debtor may be adjudicated bankrupt and the creditors may, after the adjudication, accept a composition or scheme, and the bankruptcy may be annulled. Before, however, the creditors assemble at their first meeting the debtor must prepare and submit a statement of his affairs.

S. 16.
Debtor's statement of affairs.

Statement of Affairs.—Where a receiving order is made the debtor must make out and submit to the official receiver a statement of his affairs, verified by affidavit, and showing the particulars of his assets, debts, and liabilities, the names, residences, and occupations of his creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require. The statement must be so submitted within the following times, namely: (i) If the order is made on the petition of the debtor, within *three* days from the date of the order: (ii) If the order is made on the petition of a creditor, within *seven* days from the date of the order; but the Court may, for special reasons, extend the time.

If the debtor fails without reasonable excuse to comply with the requirements of this section, the Court may, on the application of the official receiver, or of any creditor, adjudge him bankrupt.

Any person stating himself in writing to be a creditor of the bankrupt may, personally or by agent, inspect the statement at all reasonable times, and take any copy thereof or extract therefrom, but any person untruthfully so stating

himself to be a creditor shall be guilty of a contempt of Court, and shall be punishable accordingly on the application of the trustee or official receiver (s. 16).

If the debtor cannot himself prepare a proper statement the official receiver may, subject to prescribed conditions, and at the expense of the estate, employ some person or persons to assist in its preparation (*a*). S. 70 (2).

A debtor may be ordered to prepare a statement of the affairs of a business carried on by him ostensibly for another person, but which the Court believes to belong to the debtor (*b*).

Public Examination.—The next matter of importance is the debtor's public examination. This is an ordeal through which, as a rule, every debtor against whom a receiving order has been made must go, whether the proceedings result in a composition or scheme of arrangement or in bankruptcy. There are, however, exceptions:—

(1) For the purpose of approving a composition or scheme by joint debtors, the Court may, if it thinks fit, and on the report of the official receiver that it is expedient so to do, dispense with the public examination of one of such joint debtors if he is unavoidably prevented from attending the examination by illness or absence abroad (*c*). S. 105 (6).

(2) Where the debtor is a lunatic or suffers from any such mental or physical affliction as in the opinion of the Court makes him unfit to attend his public examination, the Court may make an order dispensing with such examination, or directing the debtor to be examined upon such terms, and in such manner, and at such place, as to the Court seems expedient (*d*). S. 2, Bankruptcy Act, 1890.

(3) As mentioned in the preceding chapter, the Court may in certain exceptional cases rescind the receiving order, though the debtor has not undergone a public examination.

S. 17 as to the public examination is shortly as follows:—

Where the Court makes a receiving order it is to hold a public sitting, on a day to be appointed, for the examination of the debtor, and the debtor must attend thereat, and be S. 17. Public examination of debtor.

(*a*) S. 70: cf. Rs. 125, 217, 218, 263, 324, 326, 338.
(*b*) *In re Cronmire*, (1894) 2 Q. B. 246.
(*c*) S. 105 (6).
(*d*) B. A. 1890, s. 2; R. 189A.

CHAP. IV. examined as to his conduct, dealings, and property. The examination is to be held as soon as conveniently may be after the expiration of the time for the submission of the statement of affairs, and the Court may adjourn it from time to time. Any creditor who has tendered a proof, or his representative authorised in writing, may question the debtor concerning his affairs and the causes of his failure. The official receiver must take part in the examination; and for the purpose thereof, if specially authorised by the Board of Trade, may employ a solicitor with or without counsel. If a trustee is appointed before the conclusion of the examination he may take part therein; and the Court may also examine the debtor. The debtor is to be examined upon oath, and must answer all such questions as the Court may put or allow to be put to him. Such notes of the examination as the Court thinks proper are to be taken down in writing, and are to be read over either to or by the debtor and signed by him (*e*), and may thereafter be used in evidence against him (*f*); but they cannot be used by the trustee as evidence in proceedings against other parties (*g*). These notes are open to the inspection of any creditor at all reasonable times. When the Court considers that the affairs of the debtor have been sufficiently investigated, it will declare the examination concluded, but not until after the day appointed for the first meeting (*h*).

A solicitor who appears for a creditor must be authorised in writing, but counsel need not be (*i*).

S. 15. ***Meetings of Creditors.***—Every debtor against whom a receiving order is made must, unless prevented by sickness or other sufficient cause, attend the first meeting of his creditors (to be held as soon as may be after the making of the receiving order, and summoned and regulated according to the rules in Schedule I. and ss. 18 and 22 of the B. A. 1890 (*k*)); and must submit to such examination and give such information as the meeting may require (*l*). The first

(*e*) B. A. 1890, s. 2 (1). As to shorthand notes, see Rs. 67, 67A.
(*f*) See *In re A Solicitor*, 25 Q. B. D. 17.
(*g*) *In re Brünner*, 19 Q. B. D. 572.
(*h*) B. A. 1883, s. 17; B. A. 1890, s. 2; Rs. 184—189, 323C.
(*i*) *Reg.* v. *Registrar of Greenwich County Court*, 15 Q. B. D. 54.
(*k*) B. A. 1883, s. 15. See *infra*, and p. 196.
(*l*) S. 24 (1).

meeting is to be summoned for a day not later than fourteen days after the date of the receiving order, unless the Court for any special reason appoint a later day. The official receiver, who, or whose nominee, is to be the chairman of the first meeting, summons it by giving not less than seven days' notice of the time and place thereof in the *Gazette* and in a local paper, and the place at which it is to be held is to be such as he considers most convenient for the majority of the creditors. He is also to send as soon as practicable to each creditor mentioned in the statement of affairs a notice of the time and place of the first meeting, with a summary of the statement of affairs, including the causes of the debtor's failure and any observations thereon which he may think fit to make; but the proceedings at the first meeting are not to be invalidated by reason of any such notice or summary not having been sent or received before the meeting (*m*). In addition to the usual meetings held, any creditor, with the concurrence of one-sixth in value of the creditors (including himself), may at any time request the trustee or official receiver to call a meeting of the creditors, and upon the person at whose instance the meeting is to be summoned depositing a sufficient sum to pay the costs of summoning the meeting, the trustee or official receiver is to call such meeting within fourteen days. The deposit will be repaid if the creditors or the Court so direct (B. A. 1890, s. 18).

Chairman of first meeting.

Composition or Scheme.—It will often be advisable for the creditors, before much expense has been incurred, to entertain a proposal from the debtor for a composition or scheme of arrangement. Under the repealed s. 18, this proposal was made at the first meeting, and if the creditors resolved to entertain it, a second meeting for the confirmation of the resolution was necessary. The debtor must now follow the procedure laid down in s. 3 of the B. A. 1890, which does not require a confirmatory meeting. By this section if any facts are proved which in a bankruptcy would compel the Court to refuse, suspend, or attach conditions to a discharge, the Court must refuse its approval of the debtor's proposal, unless there is reasonable security for the payment of not less than 7*s*. 6*d*. in the £ on all the

(*m*) Sch. I., Rs. 1—4, 7.

CHAP. IV.

Debtor not released from certain liabilities.

unsecured debts. Again, a composition or scheme accepted and approved does not release a debtor from any liability under a judgment in an action for seduction, or under an affiliation order, or under a judgment against him as a co-respondent in a matrimonial cause, except to such extent and under such conditions as the Court expressly orders. S. 3 enacts :—

Bankruptcy Act, 1890, s. 3. Compositions and schemes of arrangement. Proposal by debtor. R. 196.

"(1) Where a debtor intends to make a proposal for a composition in satisfaction of his debts, or a proposal for a scheme of arrangement of his affairs, he shall, within four days of submitting his statement of affairs, or within such time thereafter as the official receiver may fix, lodge with the official receiver a proposal in writing, signed by him, embodying the terms of the composition or scheme which he is desirous of submitting for the consideration of his creditors, and setting out particulars of any sureties or securities proposed.

Meeting to consider proposal.

"(2) In such case the official receiver shall hold a meeting of creditors, before the public examination of the debtor is concluded, and send to each creditor, before the meeting, a copy of the debtor's proposal with a report thereon; and if at that meeting a majority in number and three-fourths in value of all the creditors who have proved resolve to accept the proposal, the same shall be deemed to be duly accepted by the creditors, and when approved by the Court shall be binding on all the creditors.

Amendment of proposal.

"(3) The debtor may at the meeting amend the terms of his proposal, if the amendment is, in the opinion of the official receiver, calculated to benefit the general body of creditors.

"(4) Any creditor who has proved his debt may assent to or dissent from the proposal by a letter, in the prescribed form, addressed to the official receiver so as to be received by him not later than the day preceding the meeting, and any such assent or dissent shall have effect as if the creditor had been present and had voted at the meeting.

Approval by Court of proposal. Rs. 196—216.

"(5) The debtor or the official receiver may, after the proposal is accepted by the creditors, apply to the Court to approve it, and notice of the time appointed for hearing the application shall be given to each creditor who has proved.

"(6) The application shall not be heard until after the

conclusion of the public examination of the debtor. Any creditor who has proved may be heard by the Court in opposition to the application, notwithstanding that he may at a meeting of creditors have voted for the acceptance of the proposal.

R. 201.

"(7) The Court shall, before approving the proposal, hear a report of the official receiver as to the terms thereof, and as to the conduct of the debtor, and any objections which may be made by or on behalf of any creditor (*n*).

Refusal of approval by Court. (Cf. p. 163.)

"(8) If the Court is of opinion that the terms of the proposal are not reasonable, or are not calculated to benefit the general body of creditors, or in any case in which the Court is required where the debtor is adjudged bankrupt to refuse his discharge, the Court shall refuse to approve the proposal.

Cases where security must be provided.

"(9) If any facts are proved on proof of which the Court would be required either to refuse, suspend, or attach conditions to the debtor's discharge were he adjudged bankrupt, the Court shall refuse to approve the proposal unless it provides reasonable security for payment of not less than seven shillings and sixpence in the pound on all the unsecured debts provable against the debtor's estate.

"(10) In any other case the Court may either approve or refuse to approve the proposal.

"(11) If the Court approves the proposal, the approval may be testified by the seal of the Court being attached to the instrument containing the terms of the proposed composition or scheme, or by the terms being embodied in an order of the Court.

On whom composition or scheme binding.

Cf. s. 37.

Bankruptcy Act, 1890, s. 10.

"(12) A composition or scheme accepted and approved in pursuance of this section shall be binding on all the creditors so far as relates to any debts due to them from the debtor and provable in bankruptcy, but shall not release the debtor from any liability under a judgment against him in an action for seduction, or under an affiliation order, or under a judgment against him as a co-respondent in a matrimonial cause, except to such an extent and under such conditions as the Court expressly orders in respect of such liability.

Certificate of official receiver.

"(13) A certificate of the official receiver that a composition or scheme has been duly accepted and approved

(*n*) The report is *primâ facie* evidence of the facts contained in it: *Ex p. Campbell*, 15 Q. B. D. 213.

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shall, in the absence of fraud, be conclusive as to its validity.

Enforcement of composition or scheme.

"(14) The provisions of a composition or scheme under this section may be enforced by the Court on application by any person interested, and any disobedience of an order of the Court made on the application shall be deemed a contempt of Court.

Annulment of composition or scheme.

"(15) If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court, on satisfactory evidence, that the composition or scheme cannot, in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, on application by the *official receiver* or the *trustee*, or by any *creditor*, adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition or payment duly made, or thing duly done, under or in pursuance of the composition or scheme (*o*). Where a debtor is adjudged bankrupt under this sub-section, any debt provable in other respects, which has been contracted before the adjudication, shall be provable in the bankruptcy.

Incorporated sections.

"(16) If under or in pursuance of a composition or scheme a trustee is appointed to administer the debtor's property or manage his business, or to distribute the composition, section twenty-seven and Part V. of the principal Act shall apply as if the trustee were a trustee in bankruptcy, and as if the terms 'bankruptcy,' 'bankrupt,' and 'order of adjudication,' included respectively a composition or scheme of arrangement, a compounding or arranging debtor, and order approving the composition or scheme.

[*i.e.* ss. 72—91.]

[*i.e.* ss. 37—65.]

"(17) Part III. of the principal Act shall, so far as the nature of the case and the terms of the composition or scheme admit, apply thereto, the same interpretation being given to the words 'trustee,' 'bankruptcy,' 'bankrupt,' and 'order of adjudication,' as in the last preceding sub-section.

Preferential debts.

"(18) No composition or scheme shall be approved by the Court which does not provide for the payment in

[See p. 116.]

(*o*) The annulment of the composition or scheme discharges a surety for it: *Walton* v. *Cook*, 40 Ch. D. 325.

priority to other debts of all debts directed to be so paid in the distribution of the property of a bankrupt.

Persons not released.

"(19) The acceptance by a creditor of a composition or scheme shall not release any person who under the principal Act and this Act would not be released by an order of discharge if the debtor had been adjudged bankrupt" (*p*).

Part V., *i.e.* ss. 72—91, herein incorporated, deals with the trustee's remuneration and costs, his receipts, payments, the books and accounts to be kept by him, and their audit, his appointment, removal, and release, his official name, his voting powers, and the control which may be exercised over him. Part III., *i.e.* ss. 37—65, relates to the proof of debts, the property available for their payment, the effect of bankruptcy on antecedent transactions, and the realisation and distribution of the bankrupt's property.

Sub-ss. 8—10 show when the Court must, and when it may, refuse to approve a composition or scheme. In exercising its discretion, the Court considers both the interests of the creditors and the conduct of the debtor. If the composition or scheme is manifestly the best thing for the creditors, the Court will be inclined to approve it (*q*); but even if it is so, and the creditors have all accepted it, the Court may, in the interests of commercial and public morality, refuse its approval, if the facts proved against the debtor are of a serious nature (*r*).

"Debts provable" in sub-s. 9 means provable, not at the date of the receiving order, but when approval of the composition or scheme is applied for. Such approval will not be refused merely on the ground that certain creditors, by an arrangement made with a friend of the debtor, but without the debtor's knowledge, have withdrawn their proofs, though the arrangement may give them an advantage over the other creditors. Where seven shillings and sixpence in the pound is secured, the Court will not refuse approval for slight acts of misconduct on the part of the debtor (*s*).

Where the creditors get no greater advantages than they

(*p*) See s. 30 (4); B. A. 1890, s. 10, p. 169. Cf. as to this section, Rs. 192, 195—216, 241A, 245, 273, 336, and 342.
(*q*) *Ex p. Kearsley*, 18 Q. B. D. 168.
(*r*) *Ex p. Campbell*, 15 Q. B. D. 213; *In re McTear*, 59 L. T. 150; *In re Burr*, (1892) 2 Q. B. D. 467.
(*s*) *In re E. A. B.*, (1902) 1 K. B. 457.

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would have had in bankruptcy, a composition or scheme will not be approved (*t*), and a scheme which by consent of the debtor enabled the trustee to enter judgment against the debtor, to be enforceable as in bankruptcy, was held to be illusory, there being no power to make the provisions of s. 28 (*u*) as to entering judgment part of a scheme (*x*).

As s. 27 and Parts III. and V. are expressly incorporated in the above section, other portions of the Act will be excluded. S. 27, which enables a trustee to examine on oath the debtor and other witnesses, was not available to a trustee under a composition or scheme under the repealed s. 18 (*y*).

Effect of Composition or Scheme.—Sub-s. 12, above, shows in respect of what debts a composition or scheme is binding on the creditors; and the word "debts" in that sub-section includes all liabilities provable in bankruptcy (*z*).

S. 19. Effect of composition or scheme.

S. 19 shows from what debts or liabilities a debtor is not released by such composition or scheme. By s. 19, "Notwithstanding the acceptance and approval of a composition or scheme, such composition or scheme shall not be binding on any creditor so far as regards a debt or liability from which, under the provisions of this Act, the debtor would not be discharged by an order of discharge in bankruptcy, unless the creditor assents to the composition or scheme" (*a*).

Adjudication of Bankruptcy.—We next come to consider under what circumstances and in what manner a debtor may be adjudged bankrupt and a trustee appointed with or without a committee of inspection. By s. 20:—

S. 20. Adjudication of bankruptcy where composition not accepted or approved, &c.

Where a receiving order is made against a debtor, then, if the creditors at the first meeting or any adjournment thereof by ordinary resolution resolve that the debtor be adjudged bankrupt, or pass no resolution, or if the creditors do not meet, or if a composition or scheme is not accepted or approved in pursuance of this Act within fourteen days after the conclusion of the examination of the debtor, or such further time as the Court may allow, the Court shall adjudge the debtor bankrupt (*b*); and thereupon the

(*t*) *Ex p. Bischoffsheim, In re Aylmer* (No. 1), 19 Q. B. D. 33.
(*u*) Now repealed, and replaced by B. A. 1890, s. 8.
(*x*) *Ex p. Bischoffsheim, In re Aylmer* (No. 2), 20 Q. B. D. 258.
(*y*) *Ex p. Whinney*, 17 Q. B. D. 238.
(*z*) *Flint* v. *Barnard*, 22 Q. B. D. 90.
(*a*) Cf. s. 30, and s. 10 of the B. A. 1890, *post*, p. 169.
(*b*) But the Court may, for good cause, adjourn an application for adjudication: *In re Thurlow*, (1895) 1 Q. B. 724.

property of the bankrupt shall become divisible among his creditors and shall vest in a trustee (*c*).

Notice of an order adjudging a debtor bankrupt, stating the name, address, and description of the bankrupt, the date of the adjudication, and the Court by which the adjudication is made, must be gazetted and advertised in a local paper, and the date of the order is for the purposes of the Act to be the date of the adjudication (s. 20; R. 193).

S. 21. Appointment of trustee.

Appointment of Trustee.—Where a debtor is adjudged bankrupt, or the creditors have resolved that he be adjudged bankrupt, the creditors may, by ordinary resolution, appoint some fit person, whether a creditor or not, to fill the office of trustee of the bankrupt's property; or they may resolve to leave his appointment to the committee of inspection.

Security by trustee.

The person so appointed shall give security in manner prescribed to the satisfaction of the Board of Trade, and the Board, if satisfied with the security, shall certify that his appointment has been duly made, unless they object to the appointment on the ground that it has not been made in good faith by a majority in value of the creditors voting, or that the person appointed is not fit to act as trustee, or that his connexion with or relation to the bankrupt or his estate or any particular creditor makes it *difficult* for him to act with impartiality in the interests of the creditors generally: Provided that where the Board make any such objection they shall, if so requested by a majority in value of the creditors, notify the objection to the High Court, and thereupon the High Court may decide on its validity (*d*).

Objection by Board of Trade.

By s. 4 of the B. A. 1890, a person shall be deemed not fit to act as trustee of the property of a bankrupt where he has been previously removed from the office of trustee of a bankrupt's property for misconduct or neglect of duty.

Where the person appointed is an accounting party to the estate, and questions are likely to arise between him and the estate which will render it difficult for him to act with impartiality, the Board of Trade will, as a rule, be justified in objecting to the appointment (*e*).

(*c*) The Court may also adjudge him bankrupt on his own application, or if he fails to submit a statement of his affairs, or the public examination is adjourned *sine die* (see Rs. 190—193). See also under B. A. 1890, s. 3 (15), *sup.*

(*d*) S. 21; for other objections, see Rs. 300, 301; and see *In re Martin*, 21 Q. B. D. 29; *In re Lamb*, (1894) 2 Q. B. 805; *post*, p. 135.

(*e*) *In re Martin*, *sup.* See also *In re Lamb*, *sup.* A common instance is,

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When appointment takes effect.

The appointment of a trustee shall take effect as from the date of the certificate (s. 21).

The official receiver shall not, save as by the Act provided, be the trustee of the bankrupt's property (*f*).

When creditors do not appoint trustee.

If a trustee is not appointed by the creditors within four weeks from the date of the adjudication, or, in the event of negotiations for a composition or scheme being pending at the expiration of those four weeks, then within seven days from the close of those negotiations by the refusal of the creditors to accept, or of the Court to approve, the composition or scheme, the official receiver shall report the matter to the Board of Trade, and thereupon the Board shall appoint some fit person to be trustee of the bankrupt's property, and shall certify the appointment. Provided that the creditors or the committee of inspection (if so authorised by resolution of the creditors) may, at any subsequent time, if they think fit, appoint a trustee, and on the appointment being made and certified the person appointed shall become trustee in the place of the person appointed by the Board.

When a debtor is adjudged bankrupt after the first meeting has been held, and a trustee has not been appointed prior to the adjudication, the official receiver must forthwith summon a meeting for the purpose of appointing a trustee (*g*).

S. 22.

Committee of inspection.

Committee of Inspection.—The creditors qualified to vote, may at their first or any subsequent meeting by resolution appoint from among the creditors (*h*), or the holders of general proxies or general powers of attorney from such creditors, a committee of inspection for the purpose of superintending the administration of the bankrupt's property by the trustee. The committee of inspection shall consist of not more than five nor less than three persons.

Bankruptcy Act, 1890, s. 5.

No creditor appointed a member of a committee of inspection shall be qualified to act until he has proved his debt and the proof has been admitted (B. A. 1890, s. 5).

S. 22.

Meetings and

The committee of inspection shall meet at such time as they shall from time to time appoint, and failing such

where the proposed trustee has acted as trustee under a deed of arrangement executed by the debtor within three months of the petition : *In re Mardon*, (1896) 1 Q. B. 140. The Court will not exercise its own discretion, but will only decide whether the objection is on the facts valid in point of law : *Ib.*

(*f*) See ss. 54, 68 (3), 70 (1 *g*), 82 (4), and 121, *post*, pp. 135, 155, 158, 172.

(*g*) S. 21 : cf. Rs. 297—319, 342. See also Chap. VIII.

(*h*) The words "qualified to vote," which followed here, are to be omitted : see B. A. 1890, s. 5.

appointment, at least once a month; and the trustee or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

quorum of committee.

The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present at the meeting.

Resignation,

A committee-man may resign his office by notice in writing signed by him and delivered to the trustee.

vacancy in office,

If a committee-man becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee, his office becomes vacant.

and removal of member of committee.

A committee-man may be removed by an ordinary resolution at any meeting of creditors of which seven days' notice has been given stating the object of the meeting.

Proceedings where vacancy in committee.

On a vacancy occurring in the office of a member of the committee, the trustee shall forthwith summon a meeting of creditors for the purpose of filling the vacancy, and the meeting may, by resolution, appoint another creditor or other person eligible as above to fill the vacancy.

The continuing members of the committee, provided there be not less than two such continuing members, may act notwithstanding any vacancy in their body; and where the number of members of the committee of inspection is for the time being less than five, the creditors may increase that number so that it do not exceed five.

Where no committee.

If there be no committee, any act or thing, or any direction or permission by this Act authorised or required to be done or given by the committee may be done or given by the Board of Trade on the application of the trustee (*i*).

Composition or Scheme after Adjudication.—Besides a composition or scheme without adjudication and a simple adjudication, there is, as we have said, a third course which may be followed in the case of a debtor against whom a receiving order has been made, and that is, to have a composition or scheme after and in annulment of an adjudication. When the composition or scheme has been duly accepted by the creditors and approved by the Court, an order may be made annulling the adjudication, but the Court may afterwards on certain grounds annul

(*i*) S. 22: cf. Rs. 268, 285, 287—290, 316, 317A, 337.

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the composition or scheme and re-adjudicate the debtor bankrupt. By s. 23:—

S. 23.

Power to accept composition or scheme after bankruptcy adjudication.

"Where a debtor is adjudged bankrupt, the creditors may, if they think fit, at any time after the adjudication (*k*), resolve to entertain a proposal for a composition in satisfaction of the debts due to them under the bankruptcy, or for a scheme of arrangement of the bankrupt's affairs; and thereupon the same proceedings shall be taken and the same consequences shall ensue as in the case of a composition or scheme accepted before adjudication (*ante*, p. 56).

Annulment of bankruptcy.

"If the Court approves the composition or scheme, it may make an order annulling the bankruptcy and vesting the property of the bankrupt in him or in such other person as the Court may appoint, on such terms, and subject to such conditions, if any, as the Court may declare.

Annulment of composition or scheme,

"If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court that the composition or scheme cannot proceed without injustice or undue delay, or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, on application by any person interested, adjudge the

and re-adjudication.

debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition, or payment duly made, or thing duly done, under or in pursuance of the composition or scheme. Where a debtor is adjudged bankrupt under this sub-section, all debts provable in other respects, which have been contracted before the date of such adjudication, shall be provable in the bankruptcy" (*l*).

The resolution required for accepting a composition or scheme under this section is that which is required for accepting a proposal made by a debtor before adjudication, *i.e.*, one passed by *a majority in number and three-fourths in value of all the creditors who have proved* (B. A. 1890, s. 6).

Annulling an Adjudication.—There are three cases in the Act (and it would appear that there are no others) (*m*), in which an adjudication may be annulled: (1) under s. 23 above mentioned; (2) where in the opinion of the Court a

(*k*) The words "by special resolution," which followed here, are repealed: B. A. 1890, s. 6, *infra*.

(*l*) S. 23: cf. B. A. 1890, s. 3 (15), *ante*, p. 58. Rs. 195—216, 245—428.

(*m*) *In re Gyll*, 37 W. R. 164: cf. p. 50, *ante*.

debtor ought not to have been adjudged bankrupt; (3) where the Court is satisfied that the debts of the bankrupt are paid in full. Ss. 35 and 36 deal with (2) and (3).

S. 35. Power of Court to annul adjudication in certain cases.

"Where in the opinion of the Court a debtor ought not to have been adjudged bankrupt, or where it is proved to the satisfaction of the Court that the debts of the bankrupt are paid in full, the Court may, on the application of any person interested, by order, annul the adjudication.

"Where an adjudication is annulled under this section all sales and dispositions of property and payments duly made, and all acts theretofore done, by the official receiver, trustee, or other person acting under their authority, or by the Court shall be valid, but the property of the debtor who was adjudged bankrupt shall vest in such person as the Court may appoint, or in default of any such appointment revert to the debtor for all his estate or interest therein on such terms and subject to such conditions, if any, as the Court may declare by order. Notice of the order annulling an adjudication shall be forthwith gazetted and published in a local paper (*n*).

S. 36. Meaning of payment of debts in full.

"For the purposes of this Part of this Act, any debt disputed by a debtor shall be considered as paid in full, if the debtor enters into a bond, in such sum and with such sureties as the Court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt, with costs, and any debt due to a creditor who cannot be found or cannot be identified shall be considered as paid in full, if paid into Court." The Part of the Act here referred to is Part II. or ss. 32—36 (*ante*, pp. 20, 64).

The power to annul an adjudication on payment of the debts in full is, after all, discretionary, and annulment may be refused where the bankrupt has committed grave offences against the bankruptcy laws (*o*).

We have already seen that under certain circumstances the Court may annul a receiving order (pp. 50, 51), or a composition or scheme of arrangement (pp. 58, 64).

(*n*) See Rs. 194—216.
(*o*) *In re Taylor*, (1901) 1 Q. B. 744.

CHAPTER V.

PROPERTY DIVISIBLE AMONGST CREDITORS, AND ADMINISTRATION OF PROPERTY.

CHAP. V.

Commencement of the Bankruptcy.—As regards the property which the trustee may claim for distribution among the creditors, the trustee's title is not limited by the date of his appointment or of the receiving order, or of the adjudication, but may relate back to the time of the first act of bankruptcy committed by the debtor within three months preceding the presentation of the petition. By s. 43:—

S. 43.
Relation back of trustee's title.

"The bankruptcy of a debtor, whether the same takes place on the debtor's own petition or upon that of a creditor or creditors, shall be deemed to have relation back to, and to commence at, the time of the act of bankruptcy being committed on which a receiving order is made against him, or if the bankrupt is proved to have committed more acts of bankruptcy than one, to have *relation back* to, and to commence at, the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within three months next preceding the date of the presentation of the bankruptcy petition; but no bankruptcy petition, receiving order, or adjudication shall be rendered invalid by reason of any act of bankruptcy anterior to the debt of the petitioning creditor."

Where a receiving order is made against a judgment debtor under s. 103, the bankruptcy relates back to and commences at the date of the order, unless the debtor is proved to have committed any previous act of bankruptcy, in which case the bankruptcy relates back to and commences at the time of the first of the acts of bankruptcy committed by the debtor within three months next preceding the date of the order (B. A. 1890, s. 20: see *ante*, p. 25).

The above provision in s. 43 as to the relation back of the trustee's title is subject to two exceptions:

Exceptions to the provision as to relation back.

1st. Where a creditor has *completed* an execution or attachment before the receiving order, and before notice of the presentation of a bankruptcy petition, or of the commission of any available act of bankruptcy by the debtor, the trustee's title will not override that of the creditor; provided that, in a case where the execution is against the goods of a debtor in respect of a judgment for a sum exceeding £20, the sheriff receives no notice of a petition on which the debtor is adjudged bankrupt within the fourteen days during which he is obliged to retain in his hands the balance of the proceeds of the sale of the goods, or the money paid to avoid sale, after deducting the costs of the execution (*a*).

2ndly. S. 49 (*post*, p. 90) protects certain transactions by or with the bankrupt or in relation to his property before the date of the receiving order, where the person dealing with him gives valuable consideration, and has no notice of an available act of bankruptcy committed by the bankrupt, *i.e.*, one committed within three months of the presentation of the petition on which the receiving order is made (*b*).

Relation back.—The doctrine of relation back, though liable to be forgotten, is of great importance to solicitors and accountants, when consulted by an insolvent debtor with regard to his difficulties. It has been held that if a debtor pays, *in ready money*, to a solicitor a sum which the solicitor requires to defray counsel's fees and other legal expenses, in opposing a petition filed against the debtor, then, though the petition succeeds, the trustee in bankruptcy cannot compel the solicitor to refund the money (*c*). The effect of that decision has been said to be that when a man comes with *ready money* and asks for legal assistance with regard to his financial affairs, a solicitor, or it may be an accountant, is not bound to ask him whence the money comes (*d*).

(*a*) See pp. 36, 39, 89.

(*b*) Ss. 6, 168, *ante*. A transaction void against the trustee may be good against other parties: *Stein* v. *Pope*, (1902) 1 K. B. 595, *ante*, p. 27.

(*c*) *In re Sinclair, Ex p. Payne*, 15 Q. B. D. 616.

(*d*) *In re Spackman, Ex p. Foley*, 24 Q. B. D. 728; *In re Simonson*, (1894) 1 Q. B. 433, 436: cf. *In re Pollitt, infra*; and *In re White*, 5 Man. 17, where an *accountant*, who on behalf of a debtor sent out a circular which was an

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But this decision will not be extended, and it does not enable a solicitor or an accountant to take from the debtor a charge on the debtor's property for services to be rendered to him, because this *ipso facto* gives them notice that the money to which they look for payment is the debtor's, and the same considerations would arise in respect of moneys which the solicitor or accountant may collect for the debtor as due to him in the course of his trade (*e*).

Again, a debtor, before any act of bankruptcy, consulted a solicitor. The solicitor (there being £40 due to him for costs) declined to act further for the debtor unless he were paid a sum to meet future costs, and the debtor thereupon placed £15 in his hands for that purpose. The solicitor then called a creditors' meeting, and prepared a deed for the benefit of creditors, which the debtor executed, and thereby committed an act of bankruptcy, on which a petition was presented, and adjudication followed: Held (1) that the solicitor could only retain such portion of the £15 as was earned by him up to the act of bankruptcy, his authority being by that act revoked: (2) that the £40 could not be set off (under s. 38) against the balance, because it formed part of money which had been handed to the solicitor for a specific purpose which had failed, and so must be returned (*f*).

Again, embarrassed debtors, having consulted their solicitors and placed their books in the hands of accountants, sent to their creditors a circular which was held to be an act of bankruptcy. Between the date of this circular and the receiving order (made a month later), the accountants collected debts due to the debtors, out of which they paid the solicitors £130 on account of costs, and retained £100 in respect of their own charges in preparing a statement of the debtor's affairs. It was held that *In re Sinclair, Ex parte Payne*, was not applicable, and that both sums must be refunded, they having been paid or received with notice of an available act of bankruptcy (*g*). It was, however, laid down that a trustee in bankruptcy may in his discretion adopt and pay for services rendered to a bankrupt after an

act of bankruptcy, and on the next day received £30 for his charges, was ordered to refund the £30 to the trustee in the debtor's bankruptcy.

(*e*) *In re Simonson, sup.*

(*f*) *In re Pollitt*, (1893) 1 Q. B. 175, 455.

(*g*) *In re Simonson*, (1894) 1 Q. B. 433.

act of bankruptcy if they have clearly produced a benefit to the estate, but that he should be slow to adopt them, and should only pay for such items as have been incurred in such a way that a benefit to the extent of the charge made has resulted to the creditors (*h*).

The same principle was applied where two partners, arrested on a charge of forgery, verbally agreed with their solicitors that the latter should conduct their defence and attend to their business affairs during their detention, and for that purpose handed to them a cheque for £250. On July 4, the partners filed their petition, on which adjudication followed, and a trustee was appointed on August 15. In August the partners were committed for trial, and the whole of the £250 was expended, but it was held that the solicitors' authority was revoked on July 4, and that subject to payment of costs up to that date they must refund the money (*i*).

But where a client paid a lump sum to his solicitor under a *binding contract* in writing (made under s. 4 of the Solicitors Act, 1870), that the solicitor should for that sum defend him and pay all the expenses of the defence, and a few days afterwards, but before the trial, the client committed an act of bankruptcy and adjudication followed, it was held that the trustee in bankruptcy could not claim repayment of the money, his only remedy being taxation under s. 10 of the above Act (*k*).

A petitioning creditor's solicitor, who had received from the debtor various sums for adjournments of the hearing of the petition, on which an adjudication was subsequently made, was held liable for them to the trustee (as moneys received with notice of an available act of bankruptcy), though he had handed them over to his client (*l*).

Property not divisible amongst Creditors.—The following property is *not* divisible amongst the creditors :—

S. 44.

Property not divisible amongst the creditors.

(1) Property held by the bankrupt on trust for any other person :

(*h*) *In re Simonson*, (1894) 1 Q. B. 433. The Court has allowed payments which the official receiver refused to allow : *In re Foster*, 72 L. T. 364.

(*i*) *In re Beyts and Craig*, 1 Man. 56.

(*k*) *In re Charlwood*, (1894) 1 Q. B. 644.

(*l*) *Ex p. Edwards, In re Chapman*, 13 Q. B. D. 747. *Semble*, it is otherwise where money is found by a *third* party, and impressed with a *trust* for the payment of the debt or costs : *In re Rogers, Ex p. Holland*, 8 Man. 243 ; *In re Drucker* (No. 1), (1902) 2 K. B. 237.

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(2) The tools (if any) of his trade and the necessary wearing apparel and bedding of himself, his wife and children, to a value, inclusive of tools and apparel and bedding, not exceeding £20 in the whole (*m*).

The second of the above classes calls for no comment: a few words may be added as to the first, lest too limited a meaning should be given to the word "trust." Trusts may, as has been pointed out in a well-known work on Bankruptcy (*n*), be divided into the following classes:

(*a*) Express trusts—where the trust is the origin of the legal ownership of the bankrupt:

(*b*) Trusts *virtute officii*, examples of which are found in the case of executors and administrators:

(*c*) Trusts created by the bankrupt, who, retaining the legal ownership, has divested himself of the whole or part of the beneficial interest.

Equitable assignments.

As to (*c*). In equity an order given by A. a debtor to B. his creditor upon a third person C. having funds of the debtor, to pay the creditor *out of such funds*, is a binding equitable assignment of so much of the funds: nor would it in such a case be necessary for B. to give notice to C. in order to perfect his assignment, although such a course should be adopted (1) so that another assignee may not by notice get priority, and (2) to prevent the operation of the reputed ownership clause in the event of A. becoming bankrupt, and the amount due to him by C. being a debt due to him in the course of his trade or business (*o*). But a promise to pay money *when* the debtor receives a debt due to him from a third person is not an equitable assignment, for it does not charge the debt in the hands of such third person (*p*). And a letter which merely directs the writer's tenant to pay his next rent to B., which letter is handed by B. to the tenant, is not an equitable assignment, notwithstanding that there was a *verbal* agreement between the writer and B. to charge the rent, for by s. 4 of the Statute of Frauds such an agreement relating to an interest in land should be in writing (*q*).

(*m*) S. 44.
(*n*) Williams, p. 145, 4th ed.
(*o*) See *Burn* v. *Carvalho*, 4 M. & C. 690. See s. 44, *post*, p. 79.
(*p*) *Field* v. *Megaw*, L. R. 4 C. P. 660.
(*q*) *Ex p. Hall, In re Whitting*, L. R. 10 Ch. 615.

Mere direction to agent.

A mere direction from a principal to his agent to pay a sum of money, or the proceeds of goods when sold, to a creditor of the principal, is not an equitable assignment, and is revocable until communicated to the creditor (*r*).

Effect of communication to creditor.

The effect of a communication of the direction to a creditor, and his assent thereto (which will be presumed in the absence of evidence to the contrary), is to create an assignment to him (*s*). But under one peculiar state of circumstances a person who is not even cognisant of the direction given by the principal to his agent may claim to have it strictly carried out. This was established by *Ex parte Waring* (*t*), where it was held, that if property has been deposited by one party liable on bills of exchange not yet due in the hands of another also liable thereon, in order to meet the bills, and before the bills become due or are paid, both parties to the deposit become bankrupt or insolvent, the holders of the bills, though ignorant when they took them of the deposit made to secure them, are entitled to have it applied in payment thereof. This rule does not depend on any equity in the bill-holders, but arises out of the necessities connected with the administration of the two insolvent estates and the equities as between the insolvents: in the words of James, L.J. (*u*), "The principle of *Ex parte Waring* applies where there are equities to adjust between two parties who become insolvent, and the adjustment of which equities, by a piece of good luck, so far as a third party is concerned, operates for the benefit of such third party." But there must be a double insolvency and a right of double proof, and if there is no such right of double proof, whatever may be the equities as between the two parties that are insolvent, they can be settled between the parties without the necessity of giving the bill-holder, who is simply a creditor without any security, that security which he has never bargained for (*x*).

The rule in *Ex p. Waring*.

Though the rule has generally been applied where the acceptor and the drawer become bankrupt, it is no objection to its application that the party sending the remittances was not a party to the bill, provided the bill was drawn in

(*r*) *Scott* v. *Porcher*, 3 Mer. 652.
(*s*) See *Siggers* v. *Evans*, 24 L. J. Q. B. 305.
(*t*) 19 Ves. 345.
(*u*) *Vaughan* v. *Halliday*, L. R. 9 Ch. 561.
(*x*) Per Mellish, L.J., *Ib.*

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respect of a transaction in which he is liable. Mellish, L.J., speaking on this subject, says, "It is true that in *Ex parte Smart* (*y*) we did in one respect carry the doctrine of *Ex parte Waring* further than it had been carried in any previous case; for I think that in all the previous cases the claim had been made by a holder of a bill who had a right of double proof against the acceptors and the drawers. In *Ex parte Smart* the holder was himself the drawer, and although he was not entitled to prove on the bill against the two firms, he was entitled to prove against the acceptor, who had accepted for the accommodation of a firm to whom the drawer of the bill had sold goods; and he was entitled to prove for the same debt against that firm for goods sold and delivered. There being therefore a double insolvency and a double right of proof, we thought that the principle of *Ex parte Waring* applied" (*z*).

(*d*) Fourthly, where a man holds property as a mere agent or factor, he will be considered to hold it as a trustee, and should he become bankrupt, his principal can claim it, so long as it is distinguishable from the mass of the bankrupt's property. But it must be capable of being traced, and must not have been left with the bankrupt under such circumstances as would render him the reputed owner (*a*). The claim of the principal or cestui que trust is subject to any lien which the agent or trustee may have on the property for debts or other liabilities (*b*).

S. 44. Property divisible amongst creditors.

Property divisible amongst Creditors.—The following property is, by s. 44, divisible amongst the creditors:—

(i) "All such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him before his discharge:

(ii) "The capacity to exercise and to take proceedings for

(*y*) L. R. 8 Ch. 220.
(*z*) See *Vaughan* v. *Halliday*, L. R. 9 Ch. p. 568.
(*a*) *Taylor* v. *Plumer*, 3 M. & S. 562. See also Factors Act, 1889, s. 12. It may be traced though its character be changed: *In re Hallett's Estate*, 13 Ch. D. 696; cf. *In re Hallett, Ex p. Blane*, (1894) 2 Q. B. 237. The doctrine in the text would not apply in the case of a mere commission agent, who, in the ordinary course of business, sells goods for consignors, and becomes a debtor for the proceeds: *Kirkham* v. *Peel*, 43 L. T. 171.
(*b*) *Jennings* v. *Mather*, (1901) 1 K. B. 109; (1902) 1 K. B. 1.

exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or before his discharge, except the right of nomination to a vacant ecclesiastical benefice; and,

(iii) "All goods being, at the commencement of the bankruptcy, in the possession, order, or disposition of the bankrupt, in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof; provided that things in action other than debts due or growing due to the bankrupt in the course of his trade or business, shall not be deemed goods within the meaning of this section" (*c*).

No difficulty will arise as to the second of the above heads, but the first and third, or the corresponding provisions of former Acts, have produced many decisions, a summary of the more important of which will now be attempted.

First, then, *all such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him before his discharge,* is divisible among his creditors. This rule must be read subject to the definition of property previously given (p. 2), and the following exceptions and qualifications:—

Exceptions and qualifications.

(*a*) Wages earned after bankruptcy by the mere personal labour of the bankrupt do not pass to the trustee, so far as they do not amount to more than what is reasonably necessary for the maintenance of the bankrupt and his family (*d*); but it is otherwise with respect to the profits of a business carried on by the bankrupt, though the business demands a large amount of his personal skill and attention, as that of a surgeon-apothecary, an architect, or a dentist (*e*). Where A. mortgaged the profits of such a business, and afterwards became bankrupt, the trustee and not the mortgagee was held

(*c*) S. 44.

(*d*) See *Wadling* v. *Oliphant*, 1 Q. B. D. 145; *In re Dowling*, 4 Ch. D. 689; *Emden* v. *Carte*, 17 Ch. D. 768; *In re Rogers, Ex p. Collins*, (1894) 1 Q. B. 425; *In re Graydon*, (1896) 1 Q. B. 417; *In re Roberts*, (1900) 1 Q. B. 422. See *post*, p. 75.

(*e*) *In re Rogers, sup.*, and cases there cited.

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entitled to the after-acquired profits (*f*). Where a bankrupt, though he had no clerk or offices, habitually earned commission by introducing purchasers of houses to vendors, such commission was held not to be personal earnings within the exception (*g*). It would seem, too, that personal earnings may lose that character where they are dealt with by the bankrupt as property (*f*).

(*b*) Where goods have been sold on credit, and the vendee becomes *insolvent* before they come into his actual or constructive possession, the vendor may stop them as long as they are in transit (*h*); and *à fortiori* he may retain the goods if the vendee becomes insolvent before the transit has begun (*h*).

(*c*) Income may be given to a man *until* he shall have become bankrupt (*i*). Thus, where a testator bequeathed certain income to A. for life, "until he should become bankrupt, or do or suffer something whereby the said income, if belonging absolutely to him, or some part thereof, would become payable to or vested in some other person," a receiving order in bankruptcy against A. was held to determine his interest in the income (*j*).

(*d*) Rights of action to recover damages for bodily or mental sufferings or personal inconvenience sustained by the bankrupt, do not pass to his trustee, probably because it would be harsh in such case to entrust to him the discretion as to whether redress should be sought or not (*k*).

S. 52. (*e*) Where the bankrupt is a beneficed clergyman the trustee may apply for a sequestration of the profits of the benefice, but must allow out of them to the

(*f*) *In re Rogers, sup.*, and cases there cited.

(*g*) *Mercer* v. *Vans Colina*, 4 Man. 363.

(*h*) See Sale of Goods Act, 1893, ss. 39—46, 61, and 62 (3). By this last section a person is deemed *insolvent*, within the meaning of that Act, who has ceased to pay his debts in the ordinary course, or cannot pay his debts as they become due, whether he has committed an act of bankruptcy or not.

(*i*) *Brandon* v. *Robinson*, 18 Ves. 429.

(*j*) *In re Sartoris's Estate*, (1892) 1 Ch. 11. See also *Mackintosh* v. *Pogose*, (1895) 1 Ch. 505. When bankruptcy happens the trustee can claim the income down to the *act of bankruptcy only*, and not later: *Montefiore* v. *Guedella*, (1901) 1 Ch. 435.

(*k*) *Beckham* v. *Drake*, 2 H. of L. 579; *Ex p. Vine*, 8 Ch. D. 364; *Rose* v. *Buckett*, (1901) 2 K. B. 449.

bankrupt while he performs the duties of the parish or place, such an annual sum, payable quarterly, as the bishop of the diocese directs, and might have appointed to a curate licensed to serve the benefice in case the bankrupt had been non-resident, and the trustee must also pay out of the profits the salary payable to any duly licensed curate of the church of the benefice for duties performed by him as such during four months before the date of the receiving order, not exceeding £50 (*l*).

(*f*) Where a bankrupt is an officer of the army or navy or an officer or clerk or otherwise employed or engaged in the civil service of the Crown, the trustee shall receive for distribution amongst the creditors *so much* of the bankrupt's pay or salary (*m*) as the Court, on the application of the trustee, with the consent of the chief officer of the department under which the pay or salary is enjoyed, may direct. Before making any order under this sub-section, the Court shall communicate with the chief officer of the department as to the amount, time, and manner of the payment to the trustee, and shall obtain the written consent of the chief officer to the terms of such payment.

S. 53 (1).

Appropriation of portion of pay or salary to creditors.

(*g*) Where a bankrupt is in the receipt of a salary or income other than as aforesaid (*n*), or is entitled to any half-pay, or pension, or to any compensation granted by the Treasury, the Court, on the application of the trustee, shall from time to time make

S. 53 (2).

(*l*) S. 52. See p. 78. Cf. s. 10 of the Benefices Act, 1898, *post*, p. 311.

(*m*) *I.e.* for *present* services rendered: *In re Ward*, (1897) 1 Q. B. 266.

(*n*) This would *not* include the contingent earnings of a professional man: *Ex p. Benwell*, 14 Q. B. D. 301; nor the wages of a working man: *In re Jones Ex p. Lloyd*, (1891) 2 Q. B. 321; nor a purely voluntary allowance: *In re Webber*, 18 Q. B. D. 111; but it would include the pension of a retired judge of a Crown colony granted by the Secretary of State for the Colonies, and voted annually by the Colonial Legislature: *Ex p. Huggins*, 21 Ch. D. 85; and the retired pay of an army officer: *In re Ward, sup.*; and the weekly salary of an actor playing under an agreement: *In re Shine*, (1892) 1 Q. B. 522; and that of a commercial traveller, though his engagement might be ended by a week's notice: *In re Brindley*, 4 Mor. 104. On the bankrupt's discharge, an order under this section will cease, if its continuance is not ordered: *In re Gold*, 8 Mor. 45. *Semble*, if contingent or personal earnings take the shape of a yearly or other periodical salary, an order may be made under this sub-section as to any margin beyond what is necessary for the maintenance of the bankrupt: *In re Rogers, Ex p. Collins*, (1894) 1 Q. B. 425. See *ante*, p. 73.

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such orders as it thinks just for the payment of the salary, income, half-pay, pension, or compensation, or of *any part thereof*, to the trustee, to be applied by him in such manner as the Court may direct.

S. 53 (3). But nothing in the two preceding paragraphs is to take away or abridge any power of the chief officer of any public department to dismiss a bankrupt, or to declare the pension, half-pay, or compensation of any bankrupt to be forfeited (*o*).

(*h*) By the rules of the *London Stock Exchange*, where a member is declared a defaulter, contracts made by him for the next settling day, for the purchase and sale of stocks and shares, are closed by the official assignee of the Stock Exchange at the market prices at the time of the default, and the members from whom differences are due on the contracts pay them to the official assignee, who out of the money so received pays those members to whom differences are due. It has been held, that the trustee in bankruptcy is not entitled to the fund so voluntarily formed by the payments of the members, but if the defaulter hands over to the official assignee any of his private assets the trustee would be entitled thereto (*p*).

Agreements that a person's goods shall belong to another on bankruptcy;

Although, as has been mentioned above (para. *c*), income may be given to a man *until* he shall become bankrupt, yet a man cannot make a settlement of his own property on himself, defeasible in the event of his bankruptcy (*q*). In short, a simple stipulation that, on a man's becoming bankrupt, that which was his property up to the date of his bankruptcy shall go over to some one else, and be taken away from his creditors, is void, as being a violation of the policy of the bankrupt law; and so, a clause in a building agreement, which declared that on the bankruptcy of the builder, everything brought upon the premises should belong to the landlord, was held void. In the case in question (*r*) all

(*o*) S. 53: cf. Rs. 79—82. See p. 78.
(*p*) *Ex p. Grant*, 13 Ch. D. 667; *Tomkins* v. *Saffery*, 3 App. Cas. 213.
(*q*) *Merry* v. *Pownall*, (1898) 1 Ch. 306.
(*r*) *Ex p. Jay, In re Harrison*, 14 Ch. D. 19; compare *In re Holland*, (1902) 50 W. R. 575. But there is nothing against bankruptcy law in a company's articles which provide that a shareholder, on becoming bankrupt, must sell his shares to particular persons, at a particular price, fixed for all persons alike, and not shown to be less than the fair price which might otherwise be obtained: *Borland's Trustee* v. *Steel Bros., Ld.*, (1901) 1 Ch. 279.

that the builder was bound to do under the agreement had been performed by him up to the date of the bankruptcy, and the landlord could allege no right to the materials on the premises except by virtue of the bankruptcy. But, where a building agreement provided that if the builder failed to perform any part of his agreement, the landlord might re-enter on the land and himself complete the houses, and that on such re-entry all materials then on the premises should be forfeited to him, as and for liquidated damages; and the landlord re-entered, on the builder failing to perform a certain stipulation in the agreement; it was held, that he was entitled to the materials as against the trustee, although such re-entry did not take place until the builder had committed an act of bankruptcy by filing a liquidation petition. The builder's interest in the materials was, in fact, defeasible in the event of his committing a breach of the agreement, and the trustee could only claim such defeasible interest (*s*). It was held in the same case, that the order and disposition section did not apply, as the landlord was not the true owner of the materials *until he re-entered* (*t*). In *Ex parte Newitt, supra*, the agreement was made in 1877, and the Court held that it was not a bill of sale as defined by the Bills of Sale Act, 1854; and now a clause in a building agreement, that all materials brought by the builder upon the land shall become the property of the landlord, does not come within the meaning of the additional words in the definition of a bill of sale, contained in the Act of 1878, namely, "an agreement, whether intended or not to be followed by the execution of any other instrument, by which a right *in equity* to any personal chattels or to any charge or security thereon, shall be conferred," for such a clause would give the landlord a right *in law* to, or the property in, the materials (*u*). And by reason of s. 8 of the Bills of Sale Act, 1882, such an agreement is not a bill of sale under that Act, at all events, where it does not amount to a security for the payment of money (*x*).

or on breach of contract.

(*s*) *Ex p. Newitt*, 16 Ch. D. 522.

(*t*) See also *In re Keen and Keen*, (1902) 1 K. B. 555. But a landlord was held to be the true owner of them where an agreement stated that all the loose materials brought on to the land should "*be deemed to be annexed to the freehold*": *In re Weibking*, (1902) 1 K. B. 713.

(*u*) Bills of Sale Act, 1878, s. 4, *post*, p. 312; *Reeves* v. *Barlow*, 11 Q. B. D. 610; on app., 12 Q. B. D. 436.

(*x*) Bills of Sale Act, 1882, s. 3, *post*, p. 319.

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Although, as appears above, a gift over of a man's own property in the event of his bankruptcy is void, as a fraud on the bankrupt laws, yet, in an antenuptial settlement, a gift over of such property in the event of a *voluntary* assignment by him is valid, and so also is such a gift over in the event of an involuntary alienation by operation of law in favour of a *particular* creditor (*y*).

The items mentioned in ss. 52, 53 (*e*, *f*, *g*, *supra*), namely, profits of a benefice, pay, &c., are apparently all property of the bankrupt vesting in the trustee, whose rights, however, are qualified by these sections (*z*). Until the trustee obtains an order under s. 53, a bankrupt may for value dispose of part of his salary, in which case he will be no longer "in receipt" of that part (*a*).

After-acquired property may be dealt with by bankrupt,

Property belonging to a bankrupt at the commencement of the bankruptcy vests absolutely in the trustee, and the bankrupt cannot deal with it; but as to property acquired by a bankrupt after his bankruptcy, and before his discharge, the bankrupt may deal with it, or recover it by action, unless the trustee intervenes: in short, until the trustee intervenes, all transactions entered into by a bankrupt after his bankruptcy with any person dealing *bonâ fide* with him, and for value, with respect to his after-acquired property, whether with or without knowledge of the bankruptcy, are valid against the trustee (*b*). This rule holds, though a *bonâ fide* assignee may not have actually received property assigned to him by a bankrupt before the trustee's intervention, and the fact that he knew that the trustee was unaware of its existence does not necessarily show *mala fides* (*c*).

except real estate.

But the rule, though it does apply to leaseholds (*d*), does not apply to *real estate;* and a bankrupt cannot, even before the intervention of the trustee, convey to a *bonâ fide* purchaser for value after-acquired real estate: in any case, the title would not be forced on the purchaser (*e*). Where

(*y*) *In re Detmold*, 40 Ch. D. 585.
(*z*) See *Ex p. Huggins*, 21 Ch. D. 85.
(*a*) *In re Shine*, (1892) 1 Q. B. 522.
(*b*) *Cohen* v. *Mitchell*, 25 Q. B. D. 262. This decision might seem from *In re Rogers, Ex p. Woodthorpe*, 8 Mor. 236, to be confined to cases where the bankrupt carries on a business without interference by the trustee, but the facts in the later case were peculiar: see also case cited in note (*e*).
(*c*) *Hunt* v. *Fripp*, (1898) 1 Ch. 675.
(*d*) *In re Clayton and Barclay's Contract*, (1895) 2 Ch. 212.
(*e*) *In re New Land Development Association and Gray*, (1892) 2 Ch. 138.

however A., without knowledge of the bankruptcy, agreed to advance to an undischarged bankrupt money to enable him to *get a conveyance* of real estate, and at the same time the bankrupt agreed that A. should have a charge on the estate for the advance which was made, the charge was held good against the trustee (*f*).

Conflict between two trustees.

Where an undischarged bankrupt, without the trustee's knowledge, carried on business and acquired property, and then again became bankrupt, the trustee in the first bankruptcy was held entitled to the property, as against the trustee in the second, though in the second bankruptcy the act of bankruptcy was an assignment of the bankrupt's property for the benefit of his creditors generally (*g*).

The Order and Disposition Section.—S. 44 includes in the property divisible among the creditors—*all goods being, at the commencement of the bankruptcy, in the possession, order, or disposition of the bankrupt, in his trade or business by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof; provided that things in action other than debts due or growing due to the bankrupt in the course of his trade or business, shall not be deemed goods within the meaning of this section.*

This is applicable in the following circumstances:—

(1) The goods must be in the bankrupt's possession, order, or disposition, in his trade or business, at the commencement of the bankruptcy;

(2) The bankrupt must be the reputed owner;

(3) The true owner must consent.

Fixtures are not goods and chattels,

The commencement of the bankruptcy has been already defined, and as to the word "goods" it must suffice to observe generally that it will not include fixtures attached to the freehold, but will include all personal chattels (*h*). Things in action are not to be deemed "goods" when they are other than debts due or growing due in the course of the bankrupt's trade or business. The term "things in action," or "choses in action" will include personal chattels not in possession, and it has been held that shares in a railway company are things in action, and so they

nor are choses in action, except debts due in the course of trade.

(*f*) *Bird* v. *Philpott*, (1900) 1 Ch. 822.
(*g*) *In re Clark, Ex p. Beardmore*, (1894) 2 Q. B. 393.
(*h*) *Horn* v. *Baker*, 2 Sm. L. C. 228; and see *ante*, p. 2.

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are excluded from the operation of the order and disposition section (*i*).

The section is not, like that of the B. A., 1869, expressly confined to traders, but at the same time it only applies to goods in the possession, order, or disposition of the bankrupt, &c., *in his trade or business*, and the change accordingly narrows the operation of the enactment. The late Act also did not apply to debts *growing* due. An occupation or duty requiring attention would be a "business" (*k*).

Bankrupt must be in sole possession as sole reputed owner.

The section will not be applicable unless the bankrupt is in the sole possession of goods as the sole reputed owner (*l*). There must be an apparent owner, and a true owner: the bankrupt must be the apparent owner, and he must not be the true owner or as much the true owner as another person. Thus where one partner *bonâ fide* allows the other to carry on the business ostensibly as his own, on the bankruptcy of the latter the share of the dormant partner in the partnership stock cannot be claimed by the trustee under this section (*m*).

It is often difficult where goods of one person are in the possession, order, or disposition of another, to determine whether the true owner's rights are affected by this section. The cases which have been decided under the old law are not easily distinguishable. The following propositions, however, may be deduced therefrom.

1st. There must be a real owner distinct from an apparent owner, and the real owner must consent to the apparent ownership *as such* (*n*). Consent implies knowledge (*o*). Trustees would appear to be the true owners where they have accepted the trust; where they have not heard of it or have declined it the beneficiaries are the true owners. A beneficiary under disability, *e.g.*, a married woman restrained from anticipation, or an infant, cannot consent (*o*).

2ndly. The section will apply where the real owner gives,

(*i*) *Colonial Bank* v. *Whinney*, 11 App. Cas. 426. A policy of life assurance is a chose in action: *Ex p. Ibbetson*, 8 Ch. D. 519; and so is a debenture of a company: *In re Pryce*, 4 Ch. D. 685

(*k*) *Rolls* v. *Miller*, 27 Ch. D. 71.

(*l*) *Ex p. Dorman*, L. R. 8 Ch. 51.

(*m*) *Reynolds* v. *Bowley*, L. R. 2 Q. B. 474.

(*n*) *Load* v. *Green*, 15 M. & W. 215.

(*o*) *In re Mills' Trusts*, (1895) 2 Ch. 564.

not the possession only, but an interest, to the bankrupt; as where he lets the goods, under such circumstances that the possession will necessarily, according to the habits of society, carry with it the repute of absolute ownership. Thus if A. assigns goods to B. for a certain sum, and B. agrees that if that sum with interest be repaid on such a day as B. shall by notice in writing appoint, the assignment shall be void, and also agrees that until default in payment is made, A. shall possess and make use of the goods, and A. becomes bankrupt, the section will apply, and the trustee and not B. will be entitled to the goods (*p*). If it be said that in such a case B. cannot by the terms of the instrument take possession of the goods at any moment, inasmuch as he is bound to take the preliminary step of giving notice in writing of his intention so to do, and that therefore the goods are not in the bankrupt's possession with the owner's consent, the answer is, that he has of his own accord put himself into a position in which he has no immediate right to the possession of the goods (*p*).

Reputed ownership.

3rdly. The bankrupt must not only have the possession, order, or disposition of the goods, in his trade or business, but he must also be reputed owner. Whether he is so or not is a question of *fact:* "The principle of law on this subject is well expressed in the preamble of the statute (21 Jac. 1, c. 19, s. 10), to which reference has been made in the argument, and which particularly contemplates the case of persons selling goods and permitted to remain in possession of them, so that they can obtain credit as if the ownership had not been changed. That being the principle, two things are necessary to bring any case within it. First, that there should be what is called the order and disposition of the property; and secondly, that there should be, in point of fact, reputed ownership arising from the circumstances. There is no inflexible rule of law that because the man who was once the owner of goods and has sold them remains in possession of them, he must therefore be held to be the reputed owner. The statute does not say that. If he remains in possession with the reputation of ownership, and in those circumstances which create a reputation of ownership, then the property will pass to his

(*p*) *Spackman* v. *Miller*, 31 L. J. C. P. 309; *In re Ginger*, (1897) 2 Q. B. 461.

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assignees; but it is always a question of fact whether or no the circumstances are such as to create that reputation" (*q*).

Avoidance of reputed ownership by well-known usage.

Thus a usage of trade to leave the goods of one person in the possession of another will exclude the reputation of ownership. If, for instance, the bankrupt is a general warehouseman, no person dealing with him would have a right to say that goods were in his reputed ownership because they were in his warehouse, for it is notorious that general warehousemen keep the goods of other people as well as their own in their warehouses (*q*). Again, the custom of hotel-keepers to hire furniture is now so well known as to exclude the operation of the reputed ownership section (*r*), and so is also the custom of hiring pianos on the three years' system (*s*). But though the Court will gladly assist the true owner of goods, who seeks to escape from the operation of the section by setting up a custom, the onus of proving the custom will lie on such person (*t*). A custom, not known to traders generally, but only to those who deal in a particular market, will not suffice (*u*). Further, it is not necessary to examine into the degree of actual knowledge which is possessed, but the Court must judge from the situation of the goods what inference as to ownership might be legitimately drawn by those who knew the facts (*x*).

The custom must be well established.

True owner's goods in hands of bankrupt's agent.

If the goods be in the hands of an agent of the bankrupt, the true owner should immediately on his becoming entitled to them give notice to the agent, and if he does so as soon as he has an opportunity, before notice of an available act of bankruptcy, and before the receiving order, the goods will not pass to the trustee, even though the notice may not reach the agent before the receiving order is made (*y*). An assignee of book debts due to the bankrupt should, to avoid the order and disposition section, give immediate notice to the debtors, and if he does so before the receiving order, and before notice of an available act of

Assignee of book debts.

(*q*) *Ex p. Watkins*, L. R. 8 Ch. p. 528: per Lord Selborne, C.
(*r*) *Crawcour* v. *Salter*, 18 Ch. D. 30; *Ex p. Turquand*, 14 Q. B. D. 636.
(*s*) *Ex p. Hattersley*, 8 Ch. D. 601.
(*t*) *Ex p. Lovering*, L. R. 9 Ch. 621 (B. A. 1869); *In re Horn*, 3 Mor. 51.
(*u*) *In re Goetz*, (1898) 1 Q. B. 787.
(*x*) *Ex p. Watkins*, L. R. 8 Ch. 520.
(*y*) See *Burn* v. *Carvalho*, 4 M. & C. 690.

bankruptcy, he will be protected, but the appointment of a receiver, without such notice, will not suffice (*z*).

Demand of goods by true owner.

If the true owner *bonâ fide* demands possession of goods with a view of taking possession before the bankruptcy, and from no fault of his own fails to get it, they are not in the possession of the bankrupt with his consent (*a*). And though the goods are in the bankrupt's possession at the commencement of the bankruptcy, yet if the true owner, not having notice of an available act of bankruptcy, as before defined (p. 2), can obtain possession before the receiving order, his title will prevail against the trustee (*b*). Nor is it necessary that the owner should obtain possession if he before notice of the act of bankruptcy and before the receiving order *bonâ fide* demand his goods and dissent to their remaining in the possession of the bankrupt (*c*).

Exception in the case of negotiable instruments.

A bill accepted by a debtor to the bankrupt, being a negotiable instrument, virtually constitutes an assignment of the debt (with notice), and will render the section inapplicable; but not so a draft not yet accepted by such debtor given by the bankrupt to A., but without notice to the debtor (*d*).

Avoidance of voluntary settlements by debtors.

Avoidance of Voluntary Settlements.—Voluntary settlements may, by s. 47, in certain cases, be declared void against the trustee in bankruptcy. By that section:—

S. 47.

"Any settlement of property not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith (*e*), and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if the settlor becomes bankrupt within two years after the date of the settlement, be void against the trustee in the bankruptcy, and shall, if the settlor becomes bankrupt at any subsequent time within ten years after the date of the settlement, be void against the trustee in the bankruptcy, unless the parties claiming under the settlement can prove

(*z*) *Rutter* v. *Everett*, (1895) 2 Ch. 872.
(*a*) *Ex p. Ward*, L. R. 8 Ch. 144.
(*b*) S. 49, *post*, p. 90; *Graham* v. *Furber*, 14 C. B. 134; *In re Seaman*, (1896) 1 Q. B. 412.
(*c*) *Smith* v. *Topping*, 5 B. & Ad. 674; *Ex p. Montagu*, 1 Ch. D. 554.
(*d*) *In re Goetz*, *sup.*
(*e*) See *post*, p. 86.

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that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement, and that the interest of the settlor in such property had passed to the trustee of such settlement on the execution thereof.

"Any covenant or contract made in consideration of marriage, for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested or contingent in possession or remainder, and not being money or property of or in right of his wife, shall, on his becoming bankrupt before the property or money has been actually transferred or paid pursuant to the contract or covenant, be void against the trustee in the bankruptcy.

Meaning of "Settlement."

"'Settlement' shall for the purposes of this section include any conveyance or transfer of property."

It would seem that there is no "settlement" within the section, unless the settlor wishes the property to be preserved (*f*). Thus, a gift of money to a son to enable him to begin business, is not within the section (*f*): but where there was a transfer of shares in a company (*g*), where shares were purchased and registered in the name of the donee (*h*), and where there was a gift of diamonds by a husband to a wife (*i*), the section was held applicable.

The voluntary payment of premiums made by a bankrupt, insolvent for ten years before his bankruptcy, to keep up a life policy voluntarily settled by him before that period, cannot be claimed under this section. The payments themselves are not "settlements," being neither ear-marked nor kept separate, nor can each payment be held to secure or represent a specific part of the policy moneys (*k*).

A settlement of damages recovered in the Divorce Court made by a husband, with the sanction of that Court, is not within the section (*l*).

"Void" means "voidable."

The word "void" in the section does not mean void *ab*

(*f*) *In re Player* (2), 15 Q. B. D. 682; *In re Tankard*, (1899) 2 Q. B. 57 *In re Plummer*, (1900) 2 Q. B. 790: cf. *In re Farnham*, (1895) 2 Ch. 799.
(*g*) *Ex p. Todd, In re Ashcroft*, 19 Q. B. D. 186.
(*h*) *In re Player* (1), 2 Mor. 261.
(*i*) *In re Vansittart*, (1893) 1 Q. B. 181.
(*k*) *In re Harrison and Ingram*, (1900) 2 Q. B. 710.
(*l*) *In re Stephenson, Ex p. Brown*, (1897) 1 Q. B. 638.

initio, but "voidable," and the section is aimed at donees under settlements, and not at *bonâ fide* purchasers or mortgagees from them. Thus, where the wife in the case just referred to pledged, before the husband's bankruptcy, the diamonds with jewellers, the jewellers' title was not defeated by the voluntary settlement on the wife (*m*). There the jewellers had no notice of the voluntary settlement, but the mere fact that a *bonâ fide* purchaser or mortgagee has notice that he is dealing with a person who claims under a voluntary settlement will not defeat his title, if at the time there is no bankruptcy, and he has no notice of any fact avoiding the settlement, or of the settlor's insolvency (*n*).

Avoidance only from date of trustee's title.

In short, a settlement avoided under the section is avoided, not from its date, but from the date of the accruer of the trustee's title, *i.e.*, that of the first available act of bankruptcy; so that, if before the latter date the property comprised in the settlement has been sold to a *bonâ fide* purchaser for value the purchaser will have a good title against the trustee in bankruptcy (*o*).

Lien for expenses.

Where a voluntary settlement, originally valid, is avoided under s. 47, the trustees thereof are entitled as against the trustee in bankruptcy to a lien on the trust property for expenses properly incurred by them as trustees in the performance of their duties (*p*).

The fact that a settlement has been declared "void against the trustee in the bankruptcy" does not entitle such trustee to stand in the place of the beneficiaries thereunder, so as to give him priority over mortgagees and incumbrancers subsequent to the settlement (*q*).

Extent of avoidance.

It would seem that a settlement avoided under the section is not avoided absolutely, but only to the extent that may be necessary for the payment of the debts of the bankrupt and the bankruptcy costs (*r*).

Latter part of s. 47 aimed against settlements of *specific* property to be acquired in the future.

The second paragraph of the section is directed against settlements of *specific* property or money expected to accrue at a future time, in which the settlor has no present interest.

(*m*) *In re Vansittart* (2), (1893) 2 Q. B. 377.
(*n*) *In re Brall*, (1893) 2 Q. B. 381; *In re Tankard*, *sup.*
(*o*) *In re Carter and Kenderdine's Contract*, (1897) 1 Ch. 776; overruling *In re Briggs and Spicer*, (1891) 2 Ch. 127, where it was held that the purchaser would be a "party claiming under the settlement."
(*p*) *In re Holden*, 20 Q. B. D. 43.
(*q*) *Sanguinetti* v. *Stuckey's Banking Co.*, (1895) 1 Ch. 176.
(*r*) *In re Sims*, 3 Man. 340.

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Thus, under s. 91 of the Act of 1869, it was held, that if a trader on his marriage were to covenant that if any property were left to him by his father he would settle it on his wife, he having no interest in it at the time, the covenant would be void against the trustee in bankruptcy, should the covenantor become bankrupt before the actual transfer of the property. But where a trader on his marriage covenanted that he would pay £6,000 to the trustees of the settlement by a given day to be held by them on the trusts of the settlement, and before the money was payable he filed a petition for liquidation, it was held that the covenant was outside the section, as the money was not ear-marked, and that the trustees might prove for the £6,000 (*s*).

Ability to pay debts.

In determining a settlor's ability to pay his debts without the aid of the property comprised in the settlement, the value of the implements of his trade and of his fixtures and of the goodwill of his business should not be taken into account if he intends to continue business; at any rate such value, if taken into account, should only be what would be realised at a forced sale (*t*). But where the settlor reserves in the settlement a life-interest to himself, the value of such interest ought to be taken into account in considering whether he was able to pay his debts at the date of the settlement (*u*).

Not applicable in cases under s. 125.

S. 47 does not apply to the administration of the estates of deceased insolvents under s. 125 (*x*).

"Purchaser."

"Purchaser" in s. 47 is not limited to a purchaser in the mercantile sense of the term, viz., a person who has bought something by contract of purchase and sale, but includes a person who has given some valuable consideration (*y*). The "good faith" required is to be on the part of the purchaser, not necessarily on both sides (*z*).

"Good faith."

Though a settlement may not be impeachable under s. 47, it may be under the statute of Elizabeth (*ante*, p. 29).

S. 48.

Avoidance of preferences in certain cases.

Fraudulent Preferences.—By s. 48:—"Every conveyance or transfer of property, or charge thereon made, every

(*s*) *Ex p. Bishop*, L. R. 8 Ch. 718; see *In re Knight*, 2 Mor. 223.
(*t*) *Ex p. Russell, In re Butterworth*, 19 Ch. D. 588.
(*u*) *In re Lowndes*, 18 Q. B. D. 677.
(*x*) *In re Gould*, 19 Q. B. D. 92: before B. A. 1890; *Hasluck* v. *Clark*, (1899) 1 Q. B. 699.
(*y*) *Hance* v. *Harding*, 20 Q. B. D. 732: cf. *Ex p. Hillman*, 10 Ch. D. 622.
(*z*) *Mackintosh* v. *Pogose*, (1895) 1 Ch. 505; *In re Tetley*, 3 Man. 321.

payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, or any person in trust for any creditor, with a view of giving such creditor a preference over the other creditors shall, if the person making, taking, paying, or suffering the same is adjudged bankrupt on a *bankruptcy petition presented within three months* after the date of making, taking, paying, or suffering the same, be deemed fraudulent and void as against the trustee in the bankruptcy (*a*).

"This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt."

Evidence.

In seeking to make out a case of fraudulent preference the trustee is liable to be defeated by the creditor showing that the payment or other transaction was the result of pressure put on the debtor by him. But the pressure which the creditor must prove is a real *bonâ fide* pressure, and there is no such pressure where a debtor informs his creditor that he cannot hold out, or that he is about to become bankrupt, and thereupon the creditor threatens him with an action to enforce payment; in such a case it is obvious that pressure could have no real effect, and that the payment or transaction sought to be set aside was not made or entered into in consequence of it (*b*). Generally, where the dominant view of the debtor is to prefer a particular creditor the Court will hold (the other conditions of the section being fulfilled), that there has been a fraudulent preference, although the debtor may have been actuated by other motives as well (*c*). The onus of proof lies on the trustee (*d*). Where the bankrupt is called as a witness, either party may cross-examine him as to what he has said of the transaction on a previous occasion (*e*).

Instances where no fraudulent preference.

But where a debtor makes a payment, not with the dominant view of preferring a particular creditor, but in the belief, on reasonable grounds, that he is under a *legal* (and

(*a*) See *post*, p. 176, as to a receiving order under s. 103: and s. 25, *post*, p. 133, as to payments after arrest after bankruptcy notice, &c.
(*b*) *Ex p. Hall*, 19 Ch. D. 580.
(*c*) *Ex p. Griffith*, 23 Ch. D. 69.
(*d*) *In re Laurie*, 5 Man. 49.
(*e*) *In re Cunningham*, 6 Man. 199.

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not merely *moral*) obligation to pay (*f*), or to save himself from exposure or a criminal prosecution (*g*), even though there had been no threat (*h*), or to revive an undisputed debt, so that it may not be barred by statute (*i*), or to protect from liability a person who is surety on the debtor's behalf for a debt (*k*), or to make reparation for a past wrong, such as a breach of trust (*l*), there will be no fraudulent preference within the section. Nor was there any where a bill of sale was *bonâ fide* given to correct an error in a former one (*m*). Again, the fact that a trader who, though he knows himself to be insolvent, still carries on business, meets his acceptances as they become due, does not *per se* show a fraudulent preference, for if he allowed them to be returned he could no longer trade (*n*); but different considerations would apply if an acceptance were met out of the ordinary course (*o*). A payment made to a co-trustee or cestui que trust has been said to be outside the section, as the relation of debtor and creditor would not exist between the parties (*p*).

A *dictum* of Lord Halsbury, L. C., questions this; but the *dictum* itself is questioned in a later case (*q*).

A creditor within s. 48 means a person who would be entitled to prove in the bankruptcy, *e.g.*, a surety, though he has not paid the debt (*r*). The payment must be to the person intended to be preferred: thus where the bankrupt pays a debt to A., in order to protect B., a surety, the trustee cannot recover the money from A. (*s*); nor from B. (*t*).

A fraudulent preference is now an act of bankruptcy (see *ante*, p. 28). The bankrupt's discharge may be affected by

(*f*) *In re Fletcher*, 9 Mor. 8; *In re Vingoe*, 1 Man. 416; *In re Vautin, Ex p. Saffery*, (1900) 2 Q. B. 325; *In re W. Blackburn & Co.*, (1899) 2 Ch. 725.
(*g*) *Ex p. Taylor*, 18 Q. B. D. 295.
(*h*) *Sharp* v. *Jackson*, (1899) App. Cas. 419.
(*i*) *Ex p. Gaze*, 23 Q. B. D. 74.
(*k*) *In re Mills*, 58 L. T. 871.
(*l*) *Ex p. Taylor, sup.*; *In re Lake*, (1901) 1 Q. B. 710.
(*m*) *In re Tweedale*, (1892) 2 Q. B. 216.
(*n*) *In re Clay*, 3 Man. 31.
(*o*) *In re Eaton*, (1897) 2 Q. B. 16.
(*p*) *Ex p. Taylor, sup.* See also *Ex p. Ball*, 35 W. R. 264.
(*q*) See *Sharp* v. *Jackson, sup.*; *In re Lake, sup.*
(*r*) *In re Paine*, (1897) 1 Q. B. 122; *In re Blackpool Car Co.*, (1901) 1 Ch. 77.
(*s*) *In re Mills, sup.*; *In re Blackpool Car Co., sup.*
(*t*) *In re Warren*, (1900) 2 Q. B. 138; *In re Blackpool Car Co., sup.*; disapproving, on this point, *In re Paine, sup.*

an *undue* preference, which would include a transaction which could not be set aside under s. 48 (*u*).

Restriction of Rights of Judgment Creditors.—An execution against the goods or land of a debtor, or an attachment of debts due to him, will not be good against the trustee, unless *completed* by the creditor before the date of the receiving order, and before notice of a bankruptcy petition by or against the debtor, or of the commission of an available act of bankruptcy by him. By s. 45:—

S. 45. Restriction of rights of creditor under execution or attachment.

"Where a creditor has issued execution against the goods or lands of a debtor, or has attached any debt due to him, he shall not be entitled to retain the benefit of the execution or attachment against the trustee in bankruptcy of the debtor, unless he has *completed* the execution or attachment before the date of the receiving order (*x*), and before notice of the presentation of any bankruptcy petition by or against the debtor, or of the commission of any available act of bankruptcy by the debtor.

"For the purposes of this Act, an execution against goods is completed by seizure and sale; an attachment of a debt is completed by receipt of the debt; and an execution against land is completed by seizure, or in the case of an equitable interest by the appointment of a receiver."

Writ of elegit.

A delivery of land to an execution creditor under a writ of *elegit* completes the seizure although the sheriff has not made his return to the writ (*y*).

Charging order.

An order *nisi* obtained by a judgment creditor under 1 & 2 Vict. c. 110, charging shares belonging to the judgment debtor, is not affected by this section (*z*).

Receiver of goods.

But where a judgment creditor obtained the appointment of a person as receiver of the goods of the debtor, it was held that he did not thereby become a secured creditor, and that he was not entitled to the goods, as if there had been any execution it had not been completed by sale (*a*).

Retention by sheriff.

The position of an execution creditor is further affected by s. 11 of the B. A. 1890 (*ante*, p. 36), which directs the

(*u*) *In re Skegg*, 25 Q. B. D. 285. See *post*, p. 166.
(*x*) This would not include an administration order under s. 125, p. 181: *Haslock* v. *Clark*, (1899) 1 Q. B. 699.
(*y*) *In re Hobson*, 33 Ch. D. 493.
(*z*) *In re Hutchinson*, 16 Q. B. D. 515.
(*a*) *In re Dickinson*, 22 Q. B. D. 187. See *In re Potts*, (1893) 1 Q. B. 648.

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sheriff (1) on being served with notice of a receiving order against the debtor to deliver to the official receiver the goods seized or any money seized or received in part satisfaction of the execution, and (2) to pay over to the official receiver or trustee the proceeds (less costs of execution) of goods sold, or money paid to avoid a sale, in respect of a judgment for a sum exceeding £20, on receiving, within fourteen days, notice of a petition by or against the debtor, against whom a receiving order is afterwards made on that or some other petition of which the sheriff has notice.

Protected Transactions.—We pass now to s. 49, which protects certain transactions (to use a general word), in connection with the bankrupt or his property, which take place before the date of the receiving order, but after the bankrupt has committed an act of bankruptcy. By s. 49:—

S. 49. Protection of *bonâ fide* transactions without notice.

"Subject to the foregoing provisions of this Act with respect to the effect of bankruptcy on an execution or attachment, and with respect to the avoidance of certain settlements and preferences, nothing in this Act shall invalidate in the case of bankruptcy—

"(*a*) Any payment by the bankrupt to any of his creditors,

"(*b*) Any payment or delivery to the bankrupt,

"(*c*) Any conveyance or assignment by the bankrupt for valuable consideration,

"(*d*) Any contract, dealing, or transaction by or with the bankrupt for valuable consideration (*b*),

"Provided that *both* the following conditions are complied with, namely—

"(1) The payment, delivery, conveyance, assignment contract, dealing, or transaction, as the case may be, takes place before the date of the receiving order; and

"(2) The person (other than the debtor) to, by, or with whom the payment, delivery, conveyance, assignment, contract, dealing, or transaction was made, executed, or entered into, has not at the time of

(*b*) A charging order on stock or shares or money in Court belonging to a judgment debtor is not a "transaction" protected by this section: *In re O'Shea's Settlement*, (1895) 1 Ch. 325; nor is an order charging a judgment debtor's interest in a partnership under s. 23 of the P. A. 1890: *Wild* v. *Southwood*, (1897) 1 Q. B. 317; nor the payment of money in respect of lost bets: *Ward* v. *Fry*, 50 W. R. 72.

the payment, delivery, conveyance, assignment, contract, dealing, or transaction, notice of any available act of bankruptcy committed by the bankrupt before that time."

"Available act of bankruptcy" has been already defined (*ante*, p. 2), and as to notice, the onus of proving the want of it lies on the person seeking the protection of the section (*c*).

Onus of proof.

A person will be deemed to have notice of an act of bankruptcy if he has knowledge of it, or if he wilfully abstains from acquiring such knowledge, or if he knows facts from which any impartial person would naturally infer that an act of bankruptcy has been committed: and in such a case the Court will not inquire whether he did in fact draw that inference or not (*d*). Notice that a petition has been presented against a person is notice of an act of bankruptcy committed by him, because such a petition must be founded upon an act of bankruptcy (*e*). But notice that a petition has been dismissed would appear not to be notice of an act of bankruptcy (*f*).

What amounts to notice.

Notice of an *intention* to commit an act of bankruptcy is not notice of an act of bankruptcy, and so where the holder of a bill of sale received from his debtor a notice (sent *bonâ fide*, and not with the object of inviting him to come and take possession), that the debtor was about to file a liquidation petition, and the bill of sale holder accordingly took possession without notice of an act of bankruptcy which had been committed on the previous day by the filing of the petition, the Court held that he was protected by s. 94, sub-s. 3, of the Bankruptcy Act, 1869 (*g*). Now, however, notice by a debtor to any of his creditors that he has suspended, or is about to suspend, payment of his debts, is in itself an act of bankruptcy (*ante*, p. 24).

S. 49 above set out does not protect transactions that take place *after* the date of the receiving order; so that a person, who, in fulfilment of a contract entered into with the bankrupt before the receiving order, pays him a sum of money after the receiving order, may be compelled to pay

S. 49 does not protect transactions *after* receiving order.

(*c*) *Ex p. Schulte*, L. R. 9 Ch. 409; *Ex p. Revell*, 13 Q. B. D. 727.
(*d*) *Ex p. Snowball*, L. R. 7 Ch. 549.
(*e*) *Lucas* v. *Dicker*, 6 Q. B. D. 84.
(*f*) *In re O'Shea's Settlement*, (1895) 1 Ch. 325.
(*g*) *In re Wright*, 3 Ch. D. 70.

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it again to the trustee, even though he had no notice of an act of bankruptcy, either at the time of entering into the contract or at the time of the payment (*h*). So, where A. contracted to purchase a house from the debtor, paying a deposit to a stakeholder, and the contract was to be completed on a future day, but in the meantime the debtor committed an act of bankruptcy, of which A. had notice; it was held, that A. could not safely complete the contract, and was entitled to the deposit (*i*). Again, s. 49 may not protect transactions contrary to bankruptcy law. Thus, where a payment to a creditor by way of fraudulent preference could not be avoided under s. 48, having been made after the petition, yet as the payment was made by the bankrupt in bad faith and contrary to bankruptcy law, it was not protected by s. 49, though it was before the receiving order, and though the creditor had no notice of an act of bankruptcy (*k*). But where A. in good faith and for a present valuable consideration entered into a transaction with a bankrupt, the transaction was protected, though it was (without, of course, A.'s knowledge) an act of bankruptcy, on which the petition for a receiving order was grounded (*l*).

nor transactions in bad faith, and contrary to bankruptcy law.

Aliter, where party dealing with bankrupt acts in good faith and gives valuable consideration.

S. 27.

Examination of the debtor, or his wife, or other person.

Discovery of Property.—The Court may, on the application of the official receiver or trustee, after the receiving order has been made, summon before it the debtor or his wife, or any person known or suspected to have in his possession any of the estate or effects belonging to the debtor, or supposed to be indebted to the debtor, or any person whom the Court may deem capable of giving information respecting the debtor, his dealings, or property, and the Court may require any such person to produce any documents in his custody or power relating to the debtor, his dealings, or property. If any person so summoned, after having been tendered a reasonable sum, refuses to come before the Court, or to produce any such document, having no lawful impediment made known to the Court at the time of its sitting and allowed by it, the Court may, by warrant, cause him to be apprehended and brought up for

(*h*) See *Ex p. Rabbidge*, 8 Ch. D. 367.
(*i*) *Powell* v. *Marshall, Parkes & Co.*, (1899) 1 Q. B. 710.
(*k*) *In re Badham*, 10 Mor. 252.
(*l*) *Shears* v. *Goddard*, (1896) 1 Q. B. 406. In *In re Badham, sup.*, the consideration was a past one: so, too, in *In re Jukes*, (1902) 2 K. B. 58.

examination. The Court may examine on oath, either by word of mouth or by written interrogatories, any person so brought before it concerning the debtor, his dealings, or property.

If any person on such examination admits that he is indebted to the debtor the Court may, on the application of the official receiver or trustee, order him to pay the amount admitted, or any part thereof, either in full discharge of the whole amount in question or not, as the Court thinks fit, with or without costs of the examination. And if he admits that he has in his possession any property belonging to the debtor, the Court may, on the application of the official receiver or trustee, order him to deliver up such property, or any part thereof, at such time, and in such manner, and on such terms as to the Court may seem just. The Court may, if it think fit, order that any person who if in England would be liable to be brought before it under this section, shall be examined in Scotland or Ireland, or in any other place out of England [within British dominions: *In re Drucker*, (1902) 2 K. B. 210] (*m*).

Trustee.

A trustee under a composition or scheme can now avail himself of s. 27 (*n*); but the section has been held not applicable where the estate of a deceased insolvent is being administered under s. 125 (*post*, p. 181) (*o*).

Questions tending to criminate.

The statement of a witness that in his belief his answer to a question may tend to criminate him is not enough to excuse him from answering, but the Court must be satisfied from the circumstances of the case, and the nature of the evidence that the witness is called upon to give, that there is reasonable ground to apprehend danger to him from his being compelled to answer; but if it once appears that the witness is in danger, great latitude will be allowed him in judging for himself the effect of any particular question (*p*). A debtor against whom a receiving order has been made must answer questions relating to his property, though the answers may criminate him (*q*).

A statement or admission made by any person in any

(*m*) S. 27. See Rs. 61—71, 323c: see *ante*, p. 9.
(*n*) B. A. 1890, s. 3 (16): see *ante*, p. 58.
(*o*) *In re Hewitt*, 15 Q. B. D. 159; *Hasluck* v. *Clark*, (1899) 1 Q. B. 699; cf. s. 21 (3) of 1890, *post*, p. 180.
(*p*) *Ex p. Reynolds*, 20 Ch. D. 294; *Ex p. Gilbert*, 3 Mor. 223.
(*q*) *Ex p. Schofield*, 6 Ch. D. 230.

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compulsory examination or deposition before any Court on the hearing of any matter in bankruptcy is not admissible as evidence against him in any proceeding in respect of any of the misdemeanours referred to in s. 85 of 24 & 25 Vict. c. 96, which is partly repealed (*r*). The misdemeanours referred to are contained in ss. 75—84 of the Act mentioned, and relate to frauds by agents, bankers, or factors. Before the B. A. 1890, no person was liable to be convicted of any of these misdemeanours where he first disclosed the same in any such compulsory examination or deposition as above mentioned; but now, as will be seen, although such a statement or admission will not be admissible against him, when tried for these misdemeanours, the fact that he has first disclosed them in any such compulsory examination or deposition will not save him from a conviction.

Solicitors.

A solicitor will not be compelled to disclose the address of a bankrupt, which the bankrupt has communicated to him in confidence for the purpose of obtaining his advice as his solicitor, but he may be so compelled where the address has not been communicated to him confidentially, or where he and the bankrupt are engaged in committing some offence (*s*). Where a witness who has been summoned for examination is too ill to attend the Court, the examination may be held before an officer of the Court elsewhere (*t*).

Witness unable to attend.

S. 51.

Seizure of property of bankrupt.

Seizure of Property.—The Court may, by warrant, direct any person to seize any part of the bankrupt's property in the possession of the bankrupt or of any one else, and for that purpose to break open any building or place of the bankrupt, where the bankrupt or any part of his property is supposed to be. The Court may also grant a search warrant if satisfied that there is reason to believe that the bankrupt's property is concealed in a house or place not belonging to him (s. 51).

Bills of Sale.

It is convenient to consider at this stage in what cases the trustee will be entitled to property which has been assigned by the bankrupt by a bill of sale.

(*r*) B. A. 1890, s. 27 (2). But the "Statement of affairs" would be admissible: *Rex* v. *Pike*, (1902) 1 K. B. 552.

(*s*) *In re Arnott*, 37 W. R. 223; and see *Ex p. Campbell*, L. R. 5 Ch. 703.

(*t*) *In re Bradbrook*, 23 Q. B. D. 226. See also R. 66.

The present law as to bills of sale is contained in four Acts (see Appendix), passed in 1878, 1882, 1890, and 1891 respectively. The two latter merely exempt certain letters of hypothecation from the definition of a bill of sale contained in s. 4 of the Act of 1878.

Before dealing with these Acts it will be useful to consider the position of a bill of sale at common law.

At common law a man might take a security upon goods without carrying them away, or taking possession of them—he might take a sale of them out and out, or he might take a mortgage of them without taking possession (*u*). At common law, on a mortgage of chattels, in the absence of express stipulation the property in them passes at once to the mortgagee, so a stipulation is inserted in the document giving the mortgagor the right to possession until the time of payment. When that time arrives, if he does not pay, the right to possession passes to the mortgagee, and the only thing that remains to the mortgagor is his right or equity to redeem. This equity continues as long as the goods are in the mortgagee's possession (*x*).

The common law position of bills of sale is, however, greatly modified by the Bills of Sale Act, 1878, and the Amending Act of 1882. The Act of 1878 applies to all bills of sale (as defined by s. 4), executed on or after its commencement, whereby the grantees have power to *take* possession of any personal chattels comprised in them (*y*), so that where the object and effect of the transaction are immediately to transfer the possession from the grantor to the grantee, the case is not touched by the Act of 1878, or the Amending Act (*z*). The Act of 1878, save with regard to the rule of construction provided by s. 7 (see *post*, p. 100), and the provisions for the renewal of registration contained in s. 11 (see *post*, p. 104) does not apply to any bill of sale executed before its commencement (s. 23).

The Act of 1882 applies only to such bills of sale (as previously defined), executed on or after its commencement, as are given "by way of security for the payment of money." Unless the context otherwise requires, it does not apply to

(*u*) *Cookson* v. *Swire*, 9 App. Cas. 653, 664.
(*x*) *Johnson* v. *Diprose*, (1893) 1 Q. B. 512.
(*y*) S. 3 of 1878.
(*z*) *Ex p. Close, In re Hall*, 14 Q. B. D. 386; *Ex p. Hubbard*, 17 Q. B. D. 690; *Ramsay* v. *Margrett*, (1894) 2 Q. B. 18.

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any bill of sale duly registered before the commencement of the Act, so long as the registration thereof is not avoided by non-renewal or otherwise (s. 3). The question whether a document was given "by way of security for the payment of money" is one, not of form, but of fact. The Court not only may, but must, inquire into the real nature of the transaction. If it be found to have been so given, then it is within the Act of 1882, however absolute the assignment of the goods may be in form (*a*).

Scope of the two Acts.

It must be carefully kept in mind that the scope and object of these two Acts are entirely distinct. The Act of 1878 was designed to prevent the rights of creditors from being affected by secret assurances of chattels which were permitted to remain in the ostensible possession of a person who had parted with his property in them. The bills of sale were therefore made void only as against creditors or their representatives. As between the parties to them they were perfectly valid. The object of the Act of 1882 was to prevent needy persons from being entrapped into signing complicated documents, which they might not understand. And so a form is provided to which bills of sale are to conform, and the result of non-observance of the form is to render the bill of sale void, even as between the parties to it. But, this being the object, the enactment is, as we have seen, limited to bills of sale given "by way of security for the payment of money by the grantor thereof" (*b*).

The two important points to note in a bill of sale are therefore:—(1) The date; (2) Whether it is given by way of security for the payment of money.

The definition of a bill of sale is the same for both Acts (*c*), and is contained in s. 4 of the Act of 1878. On examination of this definition it will be seen that it falls within four heads: (1) Certain instruments which operate as assurances of personal chattels; (2) Authorities or licences to take possession of personal chattels as security for any debt; (3) Agreements by which a right in equity to any personal chattels, or to any charge or security thereon is conferred; (4) Exceptions from the definition.

(*a*) *Beckett* v. *Tower Assets Company*, (1891) 1 Q. B. 638; *Madell* v. *Thomas* (1891) 1 Q. B. 230: see also *In re Watson*, 25 Q. B. D. 27.

(*b*) *North Central Wagon Company* v. *M. S. & L. Ry. Co.*, 13 App. Cas. at p. 560.

(*c*) See s. 3 of 1882.

1. *Assurances.*—Not every document which may be drawn up at the time when the transaction is being carried out for the purpose of transferring goods from one party to another, is a bill of sale (*d*). If the document is intended by the parties to it to be a part of the bargain to pass the property in the goods, then, whatever the form of the document may be, even if it be only a receipt for the purchase money, it is, by s. 4, to be deemed to be a bill of sale, though it is not so in fact. But if the transaction is complete without the document, so that the property passes independently of it, the non-registration of a superfluous document will not avoid the transaction, since the Acts strike at documents, not transactions (*e*). For example, upon an oral agreement by which title to a personal chattel was given by way of security for an advance, the grantor of the chattel signed a "receipt" (as if there had been an absolute sale), which receipt was not intended to and did not express the real contract between the parties; in these circumstances it was held, that such document, not being an assurance, was not a bill of sale within s. 4 of the Act of 1878; and that the grantee in possession of the chattel under such agreement, being able to defend his possession without the document, his title was not affected by the Bills of Sale Acts (*e*). Again, where goods are pledged as security for a loan, and delivered to the pledgee, a document signed by the pledgor recording the transaction and regulating the rights of the pledgee as to the sale of the goods is not a bill of sale, for though the pledge is accompanied by a written document, yet the transaction of pledge is complete without it (*f*). In such a case the document is not a licence to *take* possession of the goods, because it does not come into operation until possession has been given to the pledgee (*g*). It is not an assurance, because the general property in pledged goods remains in the pledgor, the pledgee only getting a special property in them (*h*). It would seem that it is not essential that the advance and the delivery of the goods must be actually contemporaneous if the delivery really takes

(*d*) *Charlesworth* v. *Mills*, (1892) App. Cas. 231; *Ramsay* v. *Margrett*, (1894) 2 Q. B. 18.
(*e*) *Newlove* v. *Shrewsbury*, 21 Q. B. D. 41; *In re Roberts*, 36 Ch. D. 196.
(*f*) *Ex p. Hubbard*, 17 Q. B. D. 690.
(*g*) *Charlesworth* v. *Mills*, (1892) App. Cas. 231.
(*h*) See *Ex p. Hubbard*, *sup.*

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place (*i*). But where a contract for the sale of undelivered goods within s. 17 of the Statute of Frauds was valid only by reason of a memorandum in writing, such memorandum was held to be a bill of sale (*k*). To come within this part of the definition, the document in question must be "a document which either in law or in equity amounts to an assurance" (*l*). An agreement to give a bill of sale, if it is relied on as an equitable assignment of the property, would be a bill of sale (*m*), but a bill of sale given in pursuance of such an agreement, and registered, would appear not to be affected by the non-registration of the agreement (*n*).

2. *Authorities or licences to take possession of personal chattels as security for any debt.*—If the document gives the grantee a right to take possession of the goods, even though it be a right to take immediate possession, it comes within this part of the definition (*o*). If, however, the transaction does not depend on the power of the one party to take possession against the will of the other, and does not begin at all until the grantor voluntarily gives possession of the goods to the grantee, that is not an authority or licence to take possession of personal chattels (*p*). A licence to seize can never, since the Act of 1882, be given as security for money, inasmuch as it cannot be expressed in the form provided by that Act (*q*). It is sometimes difficult to determine whether a licence to seize has been granted or not. This is especially the case where there purports to be a sale followed by a hiring agreement, by means of which the hirer is eventually to get back the property in the goods which were originally his own. If the hiring agreement is a real letting out of goods by the real owner of them, then it is not a bill of sale; but if the substance of the matter is that the goods are security for a loan to the hirer, the agreement will be a bill of sale (*r*).

(*i*) See *Hilton* v. *Tucker*, 39 Ch. D. 669.
(*k*) *In re Roberts*, 36 Ch. D. 136. S. 17 is replaced by Sale of Goods Act, 1893, s. 4.
(*l*) *North Central Wagon Co.* v. *M. S. & L. Ry. Co.*, 35 Ch. D. at p. 213.
(*m*) *Ex p. McKay, In re Jeavons*, L. R. 8 Ch. 643.
(*n*) *Ex p. Hauxwell*, 23 Ch. D. 626.
(*o*) *Ex p. Parsons*, 16 Q. B. D. 532.
(*p*) *Ex p. Hubbard*, 17 Q. B. D. 690.
(*q*) *Ex p. Parsons*, 16 Q. B. D. 532.
(*r*) *In re Watson*, 25 Q. B. D. 27.

3. *Agreements by which a right in equity to any personal chattels, or to any charge or security thereon, is conferred.*—A familiar instance of this is where chattels to be afterwards acquired are assigned or charged by a document. At law, no interest is transferred until possession is taken; in equity, the moment the property comes into existence the agreement operates on it (*s*); so that a right in equity to the chattels, or to a charge upon them, would be created. But where the legal and equitable rights arise together, as in the case of building agreements containing a clause that all plant and materials brought upon the land are to become the property of the lessor (*t*), this part of the definition does not apply. And since at the very moment at which the goods are ascertained, *i.e.*, when they are brought upon the land, possession of them is given, the transaction would seem to be outside the scope of the Act (*u*). Except in two cases (*x*) future chattels cannot now be charged by way of security, since the grantor would not be the true owner within s. 5 of the Act of 1882.

4. *Exceptions.*—It is unnecessary to deal with these at length. It may be mentioned that a memorandum of agreement, though informal and not under seal, may be a marriage settlement within the definition section (*y*). The Bills of Sale Act, 1890, as amended by the Bills of Sale Act, 1891, establishes another exception in the case of certain instruments declaring trusts of imported goods.

Let us now deal somewhat specifically with—

I. The principal sections of the Act of 1878 which apply to both classes of bills of sale:

II. The sections of the Act of 1878 which apply only to absolute bills:

III. The Act of 1882.

Personal chattels.

I. ***Sections of Act of 1878 not confined to absolute Bills of Sale.***—S. 4. *Personal Chattels.*—This expression includes goods, furniture, and other articles capable of complete transfer by delivery and (when separately assigned or charged), fixtures and growing crops; but it does not

(*s*) See *Holroyd* v. *Marshall*, 10 H. of L. 191.
(*t*) See *Reeves* v *Barlow*, 12 Q. B. D. 436; see also *Morris and Delobbel-Flipo*, (1892) 2 Ch. 352.
(*u*) *Ex p. Close*, 14 Q. B. D. 386.
(*x*) See s. 6 of 1882, and *Seed* v. *Bradley*, (1894) 1 Q. B. 319, *post*, p. 109.
(*y*) *Wenman* v. *Lyon*, (1891) 1 Q. B. 634; (1891) 2 Q. B. 192.

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(*inter alia*) include fixtures (except trade machinery as defined in s. 5), when assigned together with an interest in the land or building to which they are affixed. By s. 5 trade machinery is personal chattels, and this means "the machinery used in or attached to any factory or workshop," exclusive of certain fixed motive powers, &c. (*z*). Then, by s. 7, fixtures are not to be deemed to be separately assigned or charged by reason only (1) that they are assigned by separate words, or (2) that power is given to sever them from the land or building to which they are affixed without otherwise taking possession of or dealing with such land or building, if by the same instrument any freehold or leasehold interest in the land or building is also conveyed or assigned to the same person. These sections present some difficulty. It has been held that where there is a mortgage in fee of a freehold building on which are trade fixtures coming within the description of trade machinery as above defined, without any mention of the fixtures, they pass by the deed as part of the land, and the Bills of Sale Acts are not applicable; but the mortgagee could not in such a case sell the fixed machinery apart from the land (*a*). This decision has been extended to a case where the fixed trade machinery is expressly mentioned in the mortgage deed as set out in the schedule (*b*). But where there was a mortgage of business premises together with the fixed and movable plant, machinery, and fixtures, implements or utensils then or thereafter to be fixed to or used on the premises, it was held that as the fixed plant, machinery and fixtures were not only mentioned but grouped with the movable plant and machinery, it was intended to confer on the grantee the same rights in respect of what was fixed, as were intended to be conferred in respect of what was movable, including a right to sever and sell, and so that the deed was void as to the fixed plant, machinery and fixtures as being a bill of sale (*c*).

(*z*) See *Topham* v. *Greenside, &c. Co.*, 37 Ch. D. 281.
(*a*) *In re Yates*, 38 Ch. D. 112.
(*b*) *In re Brooke, B.* v. *B.*, (1894) 2 Ch. 600.
(*c*) *Small* v. *Nat. Prov. Bank*, (1894) 1 Ch. 686. The above are the decisions: but it is respectfully submitted that *In re Brooke* is wrong, because the trade machinery (which, by s. 5, is personal chattels) did not pass as merely incident to the building but was expressly assigned or assured. As to *Small* v. *Nat. Prov. Bank*, may it not be misleading in drawing no distinction between ordinary fixtures and fixed trade machinery, which, it is submitted, is always for the

S. 6. An attornment clause in a mortgage of land, whereby, by reason of the relation of landlord and tenant thereby created, a power of distress is given to the mortgagee as security for the payment of interest in arrear, is a bill of sale within this section (*d*). So is also a stipulation in an agreement of tenancy that the landlord should have power to distrain for moneys accruing due for goods supplied (*e*). But though the power of distress is avoided, the relation of landlord and tenant appears to be unaffected (*f*). The proviso at the end of the section is intended to except the case of a *bonâ fide* lease by a mortgagee in possession, not a lease to secure money. To bring a case within the exception it is necessary that the mortgagee should first *take possession* of the mortgaged premises, and should then demise them to the mortgagor (*g*). The attornment clause itself is not such a taking possession by the mortgagee as is contemplated by the proviso, and will not therefore of itself enable the mortgagee to make a new demise which shall be within the proviso (*h*).

S. 8. This section is repealed except as to absolute bills of sale, but both by it and by s. 8 of the Act of 1882 the consideration for which a bill of sale is given must be truly stated. It is sufficient if the facts are accurately stated, either as to their legal effect, or as to their mercantile and business effect (*i*). A collateral agreement, *e.g.* as to the application of the money (*k*) or not to register (*l*), need not be stated. Where the consideration was stated to be £312 "now owing" by grantor to grantee, but of this £126 was the consideration represented by current bills accepted by the grantee for the grantor, the consideration was not truly

purposes of the Acts personal chattels, and therefore an assignment of it would require to be registered as a bill of sale, though there is no express power to sever and sell it? See s. 7: see also *In re Yates*, *sup.*, at p. 120, per Cotton, L.J.

(*d*) *Ex p. Kennedy, In re Willis*, 21 Q. B. D. 384.

(*e*) *Pulbrook* v. *Ashby & Co.*, 56 L. J. Q. B. 376.

(*f*) See and cf. *Mumford* v. *Collier*, 25 Q. B. D. 279; *Scobie* v. *Collins*, (1895) 1 Q. B. 375.

(*g*) *Ex p. Kennedy, In re Willis*, *sup.*

(*h*) *Green* v. *Marsh*, (1892) 2 Q. B. 330.

(*i*) *Credit Company* v. *Pott*, 6 Q. B. D. 295; *Richardson* v. *Harris*, 22 Q. B. D. 268; *Ex p. Johnson, In re Chapman*, 26 Ch. D. 338.

(*k*) *Ex p. Nat. Mer. Bank, In re Haynes*, 15 Ch. D. 42: cf. *Richardsan* v. *Harris*, *sup.*; *In re Wiltshire*, *infra*.

(*l*) *Ex p. Popplewell, In re Storey*, 21 Ch. D. 73.

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stated (*m*). Nor was it where it was set forth as the sum of £90 "now due and owing," £50 of this being advanced at the time (*n*). If the consideration is a judgment debt, an execution creditor would be entitled to show that the judgment was obtained by collusion (*o*). Payment to a third person, or retention of part of the money by the grantee at the request of the grantor, may be called payment to the grantor, but the retention must be in respect of an existing debt due to the grantee, and not of an accruing liability. The retention of an agreed sum for the expenses of the transaction cannot be treated as a payment to the grantor (*p*); but if a solicitor acting for both parties receives the consideration money as agent for the grantor, the whole consideration may be stated as paid to the grantor, though the solicitor after the execution of the deed retains his costs out of the proceeds with the grantor's consent (*q*). Again, a sum handed to the grantor on the terms that part of it shall be applied in immediately discharging an accruing liability of grantor and grantee to a third person, the cheque for that part being made payable to such third person, may be said to be "now paid" to the grantor (*r*).

S. 9. *Avoidance of duplicate bills of sale.*—This section does not apply to a subsequent bill of sale executed more than seven days after a prior unregistered bill of sale (*s*). It was intended to frustrate the device of giving a series of bills of sale, each within seven days of the execution of the one immediately preceding it, by which the necessity for registration would be dispensed with. It may be noted that the acceptance by the grantee of another bill of sale from the grantor, in ignorance that the grantor has been adjudicated a bankrupt, has been held not to operate as a surrender of the prior bill of sale (*t*). Where two bills of sale are given to the same grantee the effect of the second upon the first depends on the intention of the parties (*u*).

(*m*) *Mayer* v. *Mindlevich*, 59 L. T. 400 : see *Cochrane* v. *Moore*, 25 Q. B. D. 57, 73 ; *Darlow* v. *Bland*, (1897) 1 Q. B. 125.
(*n*) *Davies* v. *Jenkins*, (1900) 1 Q. B. 138.
(*o*) *Usher & Co.* v. *Martin*, 61 L. T. 778.
(*p*) *Richardson* v. *Harris*, *sup.* ; *Hamilton* v. *Chaine*, 7 Q. B. D. 319 ; *Ex v. Rolph*, 19 Ch. D. 98 ; *Ex p. Firth*, 19 Ch. D. 419.
(*q*) *Ex p. Hunt*, 13 Q. B. D. 36.
(*r*) *In re Wiltshire*, (1900) 1 K. B. 96
(*s*) *Carrard* v. *Meek*, 50 L. J. Q. B. 187.
(*t*) *In re Bargen*, (1894) 1 Q. B. 444.
(*u*) *Cooper* v. *Zeffert*, 32 W. R. 302.

S. 10 (2). This sub-section (*x*) was intended to give reasonable information to those about to deal with persons who have given bills of sale. It is not sufficient to verify in the affidavit the signature of the attesting witness and describe his residence and occupation, as it would not necessarily follow that he was present at the execution of the deed (*y*). It will be probably sufficient, however, if this fact can be inferred from the affidavit, though not expressly stated in it (*z*). The description of the residence and occupation of the grantor in the affidavit must be such that those who knew him would recognise him, though every undertaking in which he might possibly be interested at the time, and in which he might possibly incur liability, need not be referred to (*a*). There is, however, nothing in the Act which requires the true name of the grantor to be given (*b*).

S. 10 (3). *Defeasance condition, or declaration of trust.* —These, to come within the sub-section, should exist at the date of the bill of sale (*c*). A defeasance is something which defeats the operation of a deed, but is contained in some other document. If it is contained in the same deed it is called a condition (*d*). The word defeasance is not therefore used here in its strict meaning, since it is to be written in the bill of sale itself; it is really a condition in the nature of a defeasance (*e*). Every condition is not, however, a defeasance, and it is important to mark the distinction between them, because the omission of a defeasance (for which there is a blank in the statutory form) would make a bill of sale by way of security sin against the form, and be void altogether under s. 9 of 1882, whereas the omission of a condition would under s. 10 (3) of 1878, merely render the registration void (*f*). The cases on this last section involve very fine distinctions. A collateral agreement as to the application of the consideration

(*x*) Sub-s. 1 applies only to absolute bills of sale.
(*y*) *Ford* v. *Kettle*, 9 Q. B. D. 139 ; *Sharpe* v. *Birch*, 8 Q. B. D. 111 ; *Ex p. Knightley*, 51 L. J. Ch. 823.
(*z*) *Yates* v. *Ashcroft*, 47 L. T. 337.
(*a*) *Feast* v. *Robinson*, 63 L. J. Ch. 321 ; *Greenham* v. *Child*, 24 Q. B. D. 29 ; *Kemble* v. *Addison*, 7 Man. 156.
(*b*) *Stokes* v. *Spencer*, (1900) 2 Q. B. 483.
(*c*) *Linfoot* v. *Pockett*, (1895) 2 Ch. 835.
(*d*) *Ex p. Popplewell*, 21 Ch. D. at p. 81.
(*e*) *Blaiberg* v. *Beckett*, 18 Q. B. D. 96.
(*f*) *Heseltine* v. *Simmons*, (1892) 2 Q. B. 547, 553.

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money is not within the section, either as a condition or declaration of trust, and of course it is not a defeasance (*g*). A deposit of a policy of insurance by way of collateral security is not a defeasance (*h*); nor is a collateral agreement that the grantee shall first resort to other securities than the bill of sale: though this latter would appear to be a condition (*i*). Where along with a bill of sale payable by instalments the grantor gave the grantee a promissory note for the amount of the loan and interest secured by the bill of sale, payable by the same instalments as in the bill of sale, the whole sum remaining unpaid on the note to become due on default of payment of one instalment, it was held that there was only one contract, and that if the whole amount of the note were paid the rights of the grantee under the bill of sale would cease, and there would be a defeasance of the bill of sale (*k*). As, however, a debt is not defeated by being paid (*i*), it is perhaps more correct to say in this case that the stipulation in the note that in a certain event all the instalments should become due was a *condition* of the payment of the debt secured by the bill of sale, which ought to have been included in the bill of sale, and not a defeasance (*l*). Again, where husband and wife gave a bill of sale to secure repayment of £300 with interest, and the wife at the same time mortgaged some reversionary interests to secure the same debt with *compound* interest payable by instalments on the same days as those mentioned in the bill of sale, it was held that the bill of sale did not contain the conditions (*i.e.* as to the compound interest) on which the borrowers were, on a certain event, to discharge their debt (*m*).

Registration.—A transfer of a registered bill of sale need not be registered. If two or more bills of sale of the same chattels are given they take priority in the order of their registration (s. 10 (3)). Re-registration must take place every five years (s. 11). Where there was no re-registration of an absolute bill of sale, but the grantee under it gave a second bill of sale of the goods by way of mortgage to a

(*g*) *Thomas* v. *Searles*, (1891) 2 Q. B. 408.
(*h*) *Carpenter* v. *Deen*, 23 Q. B. D. 566.
(*i*) *Heseltine* v. *Simmons*, *sup.*
(*k*) *Counsell* v. *London and Westminster, &c. Co.*, 19 Q. B. D. 512.
(*l*) See *Edwards* v. *Marcus*, (1894) 1 Q. B. 587.
(*m*) *Edwards* v. *Marcus*, (1894) 1 Q. B. 587.

third party, this was held good against a person who, after its date, became an execution creditor of the first grantor, for, at its date, there was no person to avoid the first bill of sale under s. 8 of the Act of 1878 (*n*). Where by accident or inadvertence there has been an omission to register a bill of sale or an affidavit of renewal thereof, or there has been an omission or mis-statement as to any person's name, residence, or occupation, a judge may order such omission or mis-statement to be rectified, either by inserting (*o*) the true name, residence, or occupation, in the *register*, or by extending the time for registration on such terms as he thinks fit (s. 14). Such jurisdiction will not be exercised so as to defeat the vested rights of third parties (*p*).

II. ***Sections of the Act of 1878 which are confined to absolute Bills of Sale.***—Ss. 8, 10 (1), and 20 of the Act of 1878 are repealed, except as to *absolute* bills of sale. By s. 10 (1) a bill of sale must be attested by a solicitor, though as between grantor and grantee such attestation is unnecessary (*q*). Registration must be effected within seven days, and a bill of sale not registered is void against trustees in bankruptcy, assignees for the benefit of creditors, and persons seizing under legal process the chattels in the bill of sale, so far as regards the property in or right to the possession of any such chattels, which at or after the time of *filing* the bankruptcy petition, or of the assignment for the benefit of creditors or of the execution of such legal process, and after the expiration of seven days, are in the possession or *apparent possession* of the grantor (s. 8). As to apparent possession, it has been held that if a broker is simply put in and remains in possession, so as to prevent the removal of the chattels, but allows everything to go on just as it did before, and permits everything to be used by the debtor and his family, then the chattels still remain in the apparent possession of the grantor. There must be something done which takes them plainly out of the possession of the grantor in the eyes of everybody who sees them (*r*). The actual

(*n*) *Antoniadi* v. *Smith*, (1901) 2 K. B. 589.
(*o*) As to register, see s. 12. He cannot rectify an omission or mis-statement in the affidavit filed with the bill of sale: *Crew* v. *Cummings*, 21 Q. B. D. 420; *In re Parsons, Ex p. Furber*, (1893) 2 Q. B. 122.
(*p*) *In re Parsons, Ex p. Furber, sup.*
(*q*) *Davis* v. *Goodman*, 5 C. P. D. 128.
(*r*) *Ex p. Jay*, L. R. 9 Ch. 704.

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visible possession of the sheriff, for instance, would take the goods out of the apparent possession of the grantor, though the grantee himself has not taken possession (*s*). Furniture settled by a husband after marriage on his wife, would not, merely because he lives with his wife in the house where the furniture is, be in his apparent possession (*t*).

By s. 20 of the Act of 1878 if a bill of sale is duly registered the chattels comprised therein will not be deemed to be in the *possession, order, or disposition* of the grantor within the meaning of the Bankruptcy Act. This section (s. 20) now applies only to absolute bills, being repealed as to bills by way of security (*u*). The Act of 1882 does not apply to any bills of sale duly registered before November 1, 1882, so long as the registration is not avoided by non-renewal or otherwise (ss. 2 and 3); and so a bill of sale, even by way of security, registered before that date under the Act of 1878, is not liable to be defeated by the possession, order, or disposition section (s. 44) of the Bankruptcy Act (*x*).

III. *The Act of 1882.*—This, as has been already said, applies to bills of sale given by way of *security for money*, and not to absolute bills of sale. By s. 4 a bill of sale under this Act must have an inventory of the chattels comprised in it set out in a schedule thereto annexed or written thereon, and it will be void, except as against the grantor, in respect of any personal chattels not specifically described in the said schedule, or (s. 5) of which the grantor was not the true owner at the time of the execution of the bill of sale. But nothing contained in the above sections is to render a bill of sale void in respect of growing crops separately assigned or charged, where they were actually growing at the time the bill of sale was executed; or in respect of fixtures (separately assigned or charged), plant (*y*), or trade machinery used in, attached to, or brought upon any land or building in substitution for any of the like

(*s*) *Ex p. Saffery*, 16 Ch. D. 668.
(*t*) *In re Satterthwaite*, 2 Man. 52.
(*u*) S. 15 of 1882; *Swift* v. *Pannell*, 24 Ch. D. 210.
(*x*) *Ex p. Izard, In re Chapple*, 23 Ch. D. 409.
(*y*) The horses of a cab proprietor held not to be "plant" within s. 6: *London, &c. Discount Co.* v. *Creasy*, (1897) 1 Q. B. 768.

fixtures, plant, or trade machinery specifically described in the schedule (s. 6).

The chattels should be described in the schedule with such particularity as would be observed in an ordinary business inventory of such chattels (*z*). The necessary description would be different in various cases. Thus, for cattle on the hills a general description would do, but for pedigree animals a more particular description would be required. "Twenty-one milch cows" would not be sufficient as a description of part of the stock of a dairy farm; some description of breed or colour or other characteristic should be added to enable them to be identified (*a*). Again, where a picture-dealer's stock was described as "450 oil-paintings in gilt frames, 300 oil-paintings unframed," the description was held insufficient (*b*).

The words "true owner" in s. 5 are used in their natural and not in any artificial meaning. A man may still be the "true owner," though his right may be qualified by rights existing in others. If a partner gives a bill of sale of partnership property it will be good to the extent of his interest (*c*). Both the legal (*d*) and the equitable (*e*) owner of goods would appear to be true owners within this section. A man who has already given a bill of sale by way of absolute transfer is no longer the "true owner," so as to be able to give a bill of sale of the same goods by way of security, although he could give a subsequent absolute bill (to which this Act does not apply), which, if registered, would take precedence of the prior bill if unregistered (*f*). But if the prior bill were given by way of security, the grantor would still have the equity of redemption of the goods of which he could give a bill of sale (*g*).

By s. 7 there are only five cases in which the grantee may seize the chattels assigned by a bill of sale by way of security, and the grantor, in the event of their seizure, may

(*z*) *Davidson* v. *Carlton Bank*, (1893) 1 Q. B. 83.
(*a*) *Carpenter* v. *Deen*, 23 Q. B. D. 566; *Davies* v. *Jenkins*, (1900) 1 Q. B. 133.
(*b*) *Witt* v. *Banner*, 20 Q. B. D. 114.
(*c*) *In re Tamplin, Ex p. Barnett*, 62 L. T. 264.
(*d*) *In re Sarl*, (1892) 2 Q. B. 591.
(*e*) *Walrond* v. *Goldmann*, 16 Q. B. D. 121; *Ex p. Pratt*, 63 L. T. 289.
(*f*) *Tuck* v. *Southern Counties Bank*, 42 Ch. D. 471.
(*g*) *Thomas* v. *Searles*, (1891) 2 Q. B. 408.

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within five days apply to the Court or a Judge, on sufficient grounds, for a restraining order: in any case, the chattels are not to be removed for five clear days from the date when they were seized by the grantee (s. 18). If the grantee seizes the goods for the purpose of realising his security, the Court may order the bill of sale to be delivered up on payment of principal, interest *up to date*, and costs (*h*). But no such order will be made where the seizure is merely for the purpose of maintaining the security (*i*).

As the form in the schedule incorporates the provisions of s. 7, if a greater right of seizure is given than is contemplated by this section the form will be sinned against, and the bill of sale will be absolutely void (*k*). As to the first cause of seizure much discussion has arisen as to what covenants can be considered as being necessary for the maintenance of the security. The statutory form contains a blank for such covenants. The result is, that terms which the parties may agree to for the maintenance of the security may be inserted in the bill of sale, but a right of seizure can only be given for the breach of those which are "necessary" for the maintenance of the security (*l*). A covenant to replace worn-out or damaged articles may be necessary to the maintenance of the security (*m*). Maintaining the security means maintaining the security created by the bill of sale, not the maintenance of a sufficient security less than that agreed to be given (*m*). If a covenant is not "necessary" for the maintenance of the security, it cannot be made so by the agreement of the parties (*m*). Where too large a power of seizure (*e.g.*, for non-production of rent receipts on demand) has in fact been given, the insertion of a proviso that the goods "shall not be liable to seizure for any cause other than those specified in s. 7," will, it seems, save the deed from being void (*n*).

(*h*) *Ex p. Wickens*, (1898) 1 Q. B. 543. So, too, where he sells with consent of grantor: *West* v. *Diprose*, (1900) 1 Ch. 337.

(*i*) *Ex p. Ellis*, (1898) 2 Q. B. 79.

(*k*) See s. 9: *Davis* v. *Burton*, 11 Q. B. D. 557.

(*l*) *Ex p. Stanford, In re Barber*, 17 Q. B. D. 259; *Goldstrom* v. *Tallerman*, 18 Q. B. D. 1; *Bianchi* v. *Offord*, 17 Q. B. D. 484; *Real and Personal Advance Co.* v. *Clears*, 20 Q. B. D. 304; *In re Morritt*, 18 Q. B. D. 222; *Topley* v. *Corsbie*, 20 Q. B. D. 350.

(*m*) *Furber* v. *Cobb*, 18 Q. B. D. 494; *Seed* v. *Bradley*, (1894) 1 Q. B. 319: cf. *Thomas* v. *Kelly*, 13 App. Cas. 506.

(*n*) *In re Bullock*, (1899) 2 Q. B. 517; cf. *Ex p. Pearce, In re Williams*, 25 Ch. D. 656. *Semble*, a grantor need not send rent receipts by post: *In re Wickens*, (1898) 1 Q. B. 543.

By s. 8, every bill of sale under the Act must be duly attested (*i.e.*, by one or more credible witnesses not being parties to it: s. 10), be registered within seven days after execution, and truly set forth the consideration (see *ante*, p. 101): otherwise the bill of sale will be void *in respect of the personal chattels comprised in it.* It will be noticed that the avoidance here is partial (*o*), whereas under s. 9 a bill of sale is wholly void unless made in accordance with the statutory form.

Form of bill of sale.

S. 9.—*Form.*—A bill of sale coming under the Act of 1882 must be in accordance with the statutory form or it will be void. Such a bill of sale consists of two parts—the body of the instrument and the schedule. If there is anything in either of these not allowed by the form, the instrument, so far as it is a bill of sale, will be avoided as against every one (*p*). The covenant to pay, which is an integral part of the form, will be gone also, and the lender would have to fall back upon the implied agreement to repay the money (*q*). For instance, if the body of the instrument contains an assignment of "future" chattels (not coming within s. 6 (2), or within the scope of a covenant necessary for the maintenance of the security: *Seed* v. *Bradley*, (1894) 1 Q. B. 319), or if the schedule contains a chattel real, it will be void under s. 9 (*q*). But in the latter case it would be good as an assignment of the chattel real (*r*). So, too, a document which assigned, by way of security, a piano, and the benefit of a hire-purchase agreement affecting it, was held good as regards the latter, though void as to the former as not being registered or in accordance with the statutory form (*s*). If, however, the consideration was untruly stated in the body of the instrument (*t*), or the schedule contained any chattels not sufficiently described, or of which the grantor was not the true owner at the time of the execution of the bill of sale, the form would be complied with, but the bill of sale would be subject to the milder penalties imposed by ss. 8, 4, and 5 respectively (*u*).

(*o*) *Heseltine* v. *Simmons*, (1892) 2 Q. B. 547, at p. 553.
(*p*) *Davies* v. *Rees*, 17 Q. B. D. 408.
(*q*) *Thomas* v. *Kelly*, 13 App. Cas. 506; *Cochrane* v. *Entwistle*, 25 Q. B. D. 116.
(*r*) *Ex p. Byrne, In re Burdett*, 20 Q. B. D. 310.
(*s*) *In re Isaacson*, (1895) 1 Q. B. 333.
(*t*) *Heseltine* v. *Simmons*, (1892) 2 Q. B. 547.
(*u*) *Thomas* v. *Kelly*, *sup.*

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The words of the Act are "in accordance with the form," not "in" the form; so that it is sufficient if a bill of sale is substantially in accordance with the form, and does not depart from it in any material respect (*x*). The test suggested in *Ex parte Stanford* (*y*) was: Has it a greater or less legal effect than the form? But this is not exhaustive (*x*), and a bill of sale will possibly be void when it departs from the form in anything which is not merely a matter of verbal difference, and will certainly be so when it departs from it in anything which is a characteristic of it (*x*).

It is a characteristic of the form that the chattels must be assigned to the person who lends the money, and it is to that person that repayment must be secured (*z*). The sum secured must be a definite sum, therefore a bill of sale cannot be given by way of guarantee (*a*). The sum secured must not include a bonus (*b*), and unless the rate of interest is a matter of very simple calculation it should be stated (*c*). The instalments, if more than one, need not be equal (*d*), and may include interest, but need not (*e*), and the number of the instalments need not be specified (*f*). The time or times of payment must be certain, or capable of being rendered so; but "on demand," or "so long after demand," will not do (*g*), but on or before a specified date, will (*h*). A very complicated and prolix bill of sale might be held not in accordance with the form (*i*), though the mere fact that it is difficult to construe would not be sufficient to avoid it (*k*). The witness's name, address, and description

(*x*) *Thomas* v. *Kelly*, *sup.*
(*y*) 17 Q. B. D. 259.
(*z*) *Melville* v. *Stringer*, 13 Q. B. D. 392: cf. *In re Smith*, *Ex p. Tarbuck*, 72 L. T. 59.
(*a*) *Hughes* v. *Little*, 18 Q. B. D. 32; *In re Hill*, 2 Man. 208.
(*b*) *Ex p. Pearce*, *In re Williams*, 25 Ch. D. 656; *Myers* v. *Elliott*, 16 Q. B. D. 526.
(*c*) *In re Cleaver*, *Ex p. Rawlings*, 18 Q. B. D. 489; *Haslewood* v. *Consolidated Credit Co.*, 25 Q. B. D. at p. 567.
(*d*) *Haslewood* v. *Con. Credit Co.*, *sup.*; *Watkins* v. *Evans*, 18 Q. B. D. 386; *In re Cleaver*, *sup.*
(*e*) *Goldstrom* v. *Tallerman*, 18 Q. B. D. 1.
(*f*) *Linfoot* v. *Pockett*, (1895) 2 Ch. 835.
(*g*) See *Hetherington* v. *Groome*, 13 Q. B. D. 789; *McKay* v. *Merritt*, 34 W. R. 433; *Sibley* v. *Higgs*, 15 Q. B. D. 619; *Clemson* v. *Townsend*, 1 C. & E. 418.
(*h*) *De Braam* v. *Ford*, (1900) 1 Ch. 142.
(*i*) *Ex p. Stanford*, *In re Barber*, *sup.*; *Melville* v. *Stringer*, *sup.*; *Furbe* v. *Cobb*, *sup.*
(*k*) *Haslewood* v. *Con. Credit Co.*, 25 Q. B. D. 555.

are an integral part of the form (*l*). So also is a clause acknowledging the receipt of the money where there is a present advance (*m*). A bill of sale by two grantors not jointly interested in the whole of the goods, but each in a part, is not in accordance with the form (*n*).

Where a bill of sale is in fact given by way of security for money, to ascertain which the Court may and will go behind the form of the transaction (*o*), it is no answer to the statute that the particular transaction could not be in the statutory form (*p*). Thus, a document giving licence to seize chattels as security for a debt would be a bill of sale, but if the licence necessitates a departure from the statutory form, as it would appear to do, the document will be void (*q*).

Miscellaneous points.

A bill of sale under the Act given for less than £30 is void (s. 12), *i.e.*, wholly void, as in cases coming under s. 9.

The Act contains provisions as to local registration of bills of sale (s. 11), and as to inspection of registered bills of sale (s. 16); and it exempts from its operation debentures issued by mortgage, loan, or other incorporated companies, and secured upon their capital stock, or goods, chattels, and effects (s. 17). This would include the debentures of ordinary joint-stock companies, for the registration of whose debentures provision is made under the Companies Acts (*r*), but not those of industrial and provident societies (*s*). A bill of sale will not protect chattels liable to distress for taxes and rates (s. 14).

(*l*) *Blankenstein* v. *Robertson*, 24 Q. B. D. 543; *Sims* v. *Trollope*, (1897) 1 Q. B. 24. So is the grantee's address: *Altree* v. *Altree: Staffordshire Fin. Co. Ld.*, (1898) 2 Q. B. 267.

(*m*) *Davies* v. *Jenkins*, (1900) 1 Q. B. 133.

(*n*) *Saunders* v. *White*, (1902) 1 K. B. 472.

(*o*) *Madell* v. *Thomas*, (1891) 1 Q. B. 230; *Beckett* v. *Tower Assets Co.*, (1891) 1 Q. B. 638.

(*p*) *Hughes* v. *Little*, *sup.*

(*q*) *Ex p. Parsons*, 16 Q. B. D. 532; *Ex p. Hubbard*, 17 Q. B. D. 690.

(*r*) See *In re Standard Manufacturing Co.*, (1891) 1 Ch. 627; *Read* v. *Joannon*, 25 Q. B. D. 500. A covering deed to secure debentures of a company is not a bill of sale: *Richards* v. *Kidderminster Overseers*, (1896) 2 Ch. 612, but as to priority of rates, taxes, &c., cf. now 60 & 61 Vict. c. 19, *post*, p. 116.

(*s*) *G. N. Ry. Co.* v. *Coal Co-operative Society*, (1896) 1 Ch. 187.

CHAPTER VI.

DEBTS PROVABLE, AND DIVIDENDS.

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Debts Provable and Non-Provable.—There are by s. 37 three classes of debts or liabilities which are not provable in bankruptcy (or under a composition or scheme of arrangement: B. A. 1890, s. 3, sub-s. 17, *ante*, p. 58):—

Debts and liabilities not provable.

(*a*) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise, or breach of trust:

(*b*) Debts or liabilities contracted by the debtor with any person after that person has had notice of an available act of bankruptcy (*a*):

(*c*) Contingent debts and liabilities, the value of which cannot in the opinion of the Court be fairly estimated.

S. 37.

(1).—"Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise, or breach of trust, shall not be provable in bankruptcy.

(2) "A person having notice of any act of bankruptcy available against the debtor shall not prove under the order for any debt or liability contracted by the debtor subsequently to the date of his so having notice.

Description of debts provable in bankruptcy.

(3) "Save as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the receiving order, or to which he may become subject before his discharge by reason of any obligation incurred before the date of the receiving order, shall be deemed to be debts provable in bankruptcy.

Estimate of contingent debts.

(4) "An estimate shall be made by the trustee of the value of any debt or liability, provable as aforesaid, which

(*a*) As to "available," see *ante*, p. 2. Where a debt so contracted is "provable" within sub-s. 3, though the creditor, by reason of notice, is under a personal incapacity for proving, the creditor cannot afterwards recover the debt in an action: *Buckwell* v. *Norman*, (1898) 1 Q. B. 622.

by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value.

(5) "Any person aggrieved by any estimate made by the trustee as aforesaid may appeal to the Court.

(6) "If, in the opinion of the Court, the value of the debt or liability is *incapable* of being fairly estimated, the Court may make an order to that effect, and thereupon the debt or liability shall, for the purposes of this Act, be deemed to be a debt not provable in bankruptcy. If, in the opinion of the Court, the value of the debt or liabitity is *capable* of being fairly estimated, the Court may direct the value to be assessed before the Court itself without the intervention of a jury, and may give all necessary directions for this purpose, and the amount of the value when assessed shall be deemed to be a debt provable in bankruptcy.

(7) "'Liability' shall for the purpose of this Act include any compensation for work or labour done, any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement, or undertaking, whether the breach does or does not occur, or is or is not likely to occur or capable of occurring before the discharge of the debtor, and generally it shall include any express or implied engagement, agreement, or undertaking, to pay, or capable of resulting in the payment of money, or money's worth, whether the payment is, as respects amount, fixed or unliquidated; as respects time, present or future, certain or dependent on any one contingency or on two or more contingencies; as to mode of valuation capable of being ascertained by fixed rules, or as matter of opinion."

Instances of contingent debts and liabilities held capable of being estimated for proof.

The Court in deciding what debts and liabilities are capable of being estimated for proof put a liberal construction on the corresponding section (31) of the Act of 1869. The principles governing the construction of that section (which also apply to the present one) were laid down by the Lords in *Hardy* v. *Fothergill* (*b*), where it was held that the assignee of a lease was released by an order of discharge from his liability under a covenant to indemnify the lessees for a breach of their covenants to repair and yield up in repair the premises at the end of

(*b*) 13 App. Cas. 351.

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the term. The present section seems to include all liabilities which can be fairly estimated, excluding those specially excepted, and excluding, perhaps, those arising on contracts which have a different object from the payment of money in any contingency, and those in which an injunction or specific performance would be the most proper remedy (*c*).

Surety.

Thus, a surety who has not paid the debt for which he is contingently liable, would, it appears, be entitled to prove in respect of such liability (*d*), and the liability of a co-surety to contribution, though unascertained at the time of his bankruptcy, seems also to be provable (*e*).

Costs.

A successful defendant's costs are provable, though untaxed, if a verdict has been obtained before the receiving order (*f*); but where a plaintiff has obtained a verdict, but not judgment, his costs are not provable where his claim in the action would not be provable before judgment. Thus, where in an action of *tort* a plaintiff obtains a verdict, but not judgment, before the receiving order, neither damages nor costs are provable (*g*).

Annuities.

The value of an annuity payable to a person for life is capable of being estimated for proof (*h*). So also the value of an annuity payable to a woman during her life, but defeasible in the event of her marrying again (*i*). And where a husband, by a separation deed, covenanted to pay an annuity to his wife during their joint lives, determinable if she should not lead a chaste life, or if they should resume cohabitation, or if the marriage should be dissolved by any act done by either of them after the date of the deed, the value of the annuity was held capable of being fairly estimated for proof (*k*). In making the estimate, every contingency should be taken into account. Thus, by a separation deed an annuity was payable by a husband to a trustee for the wife, during the joint lives of husband and wife, but it was to cease if the parties should resume cohabitation, and there was a covenant to indemnify the

(*c*) 13 App. Cas. 351.
(*d*) *In re Herepath*, 38 W. R. 752; *In re Paine, Ex p. Read*, (1897) 1 Q. B. 122; *In re Blackpool Car Co.*, (1901) 1 Ch. 77 : cf. *In re Parrett*, 39 W. R. 400.
(*e*) *Wolmershausen* v. *Gullick*, (1893) 2 Ch. 514.
(*f*) *Ex p. Peacock*, L. R. 8 Ch. 682; *In re Bluck*, 57 L. T. 419.
(*g*) *In re Newman*, 3 Ch. D. 494.
(*h*) *Ex p. Naden*, L. R. 9 Ch. 670.
(*i*) *In re Blakemore*, 5 Ch. D. 372.
(*k*) *Ex p. Neal*, 14 Ch. D. 579.

husband against liability for the debts contracted by the wife: held, that a valuation of the annuity for their joint lives, without taking into account the possibility of a resumption of cohabitation, and of the husband not being indemnified against the debts contracted by the wife, was incorrect (*l*).

Alimony.

Future periodical payments of alimony ordered by the Divorce Court to be paid by a husband to his wife have been held not capable of valuation, and so they are not provable under the husband's bankruptcy (*m*), even to the amount which has become ascertained at the time of proof (*n*). Further, even instalments due at the date of the receiving order are not provable. In fact, instalments of alimony (or of permanent maintenance ordered under 29 & 30 Vict. c. 32, s. 1) are not *debts*, and a husband, notwithstanding bankruptcy, remains liable for them (*o*). But damages which a co-respondent has been ordered to pay into Court are provable, though not a good petitioning creditor's debt (*p*).

Damages.

As to reducing proof for annuity.

When the value of the debt or liability has been ascertained and proved for, the proof must be for better or worse; thus, where a debtor had covenanted to pay a life annuity to trustees for the benefit of his wife, and the annuity was valued, and a proof made, and a dividend paid thereon, and then the wife died, and it was found that the dividend paid exceeded the amount of the payments which the husband would have had to make if he had remained solvent, it was held, that the trustees could not be called upon to refund the excess (*q*).

But where proof was made for the value of an annuity payable by the bankrupt during the life of the annuitant, and before the trustee had admitted or rejected, or otherwise dealt with the proof, the annuitant died, it was held, that the amount of the proof must be reduced, and limited to the sums due and unpaid at the annuitant's death (*r*).

Proof on a judgment.

A judgment is *primâ facie* evidence of a debt, and proof

(*l*) *In re Pearce*, 13 Ch. D. 262.
(*m*) *Linton* v. *Linton*, 15 Q. B. D. 239.
(*n*) *In re Hawkins*, (1894) 1 Q. B. 25.
(*o*) *Kerr* v. *Kerr*, (1897) 2 Q. B. 439.
(*p*) *In re O'Gorman*, (1899) 2 Q. B. 62.
(*q*) *Ex p. Bates*, 11 Ch. D. 914; cf. *Ex p. Wardley*, 6 Ch. D. 790.
(*r*) *In re Dodds*, 7 Mor. 199.

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may be made in respect of it, but if there are circumstances casting suspicion on it or the debt, the Court may require evidence of the consideration for the debt (*s*).

Retired partner.

A retired partner may prove against a bankrupt firm, in competition with the joint creditors, when no debt has been proved for which he and the firm are jointly liable (*t*).

Withdrawal of proof.

A proof may be withdrawn before it has been adjudicated upon (*u*).

S. 39.

Rules as to Proof of Debts.—The mode of proving debts, the right of proof by secured and other creditors, the admission and rejection of proofs, and certain other matters are regulated by the rules in Sch. 2 (*post*, p. 197).

Priority of Debts.—The order in which debts are payable is now regulated by *The Preferential Payments in Bankruptcy Act*, 1888, 51 & 52 Vict. c. 62, which replaced s. 40, sub-ss. 1 and 2 of the B. A. 1883, and sub-ss. 3—6 inclusive of that section. By the Act of 1888 (*x*) :—

Preferential debts—

"1.—(1) In the distribution of the property of a bankrupt, and in the distribution of the assets of any company being wound up under the Companies Act, 1862, and the Acts amending the same, there shall be paid in priority to all other debts—

Rates and taxes.

(*a*) "All parochial or other local rates due from the bankrupt or the company at the date of the receiving order, or, as the case may be, the commencement of the winding-up, and having become due and payable within twelve months next before that time, and all assessed taxes, land tax, property or income tax assessed on the bankrupt or the company up to the fifth day of April next before the date of the receiving order, or, as the case may be, the commencement of the winding-up, and not exceeding in the whole one year's assessment;

Clerks and servants.

(*b*) "All wages or salary of any clerk or servant in respect of services rendered to the bankrupt or the

(*s*) *Ex p. Revell*, 13 Q. B. D. 720 ; *Ex p. Lennox*, 16 Q. B. D. 315.
(*t*) *Ex p. Andrews*, 25 Ch. D. 505.
(*u*) *In re Rhoades*, (1899) 1 Q. B. 905 ; (1899) 2 Q. B. 347. A conditional withdrawal of a proof, pending an appeal against it, will not be allowed : *In re Mateo Clark, Ex p. B. A. & P. Ry. Co.*, (1901) 1 Q. B. 655.
(*x*) The debts mentioned in s. 1 of this Act have now priority over the claims of holders of debentures or debenture stock under a "floating charge" created by a *company*, both in the case of a winding-up, and where a receiver is appointed, or possession taken, on behalf of the holders : see 60 & 61 Vict. c. 19.

company during four months before the date of the receiving order, or, as the case may be, the commencement of the winding-up, not exceeding £50; and

Labourers and workmen.

(c) "All wages of any labourer or workman not exceeding twenty-five pounds, whether payable for time or for piece work, in respect of services rendered to the bankrupt or the company during two months before the date of the receiving order, or, as the case may be, the commencement of the winding-up: provided that where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the Court may decide to be due under the contract, proportionate to the time of service up to the date of the receiving order, or, as the case may be, the commencement of the winding-up.

—rank equally *inter se.*

(2) "The foregoing debts shall rank equally between themselves and shall be paid in full, unless the property of the bankrupt is, or the assets of the company are, insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) "Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the foregoing debts shall be discharged forthwith so far as the property of the debtor, or the assets of the company, as the case may be, is or are sufficient to meet them.

Position of landlord who has distrained.

(4) "In the event of a landlord or other person distraining or having distrained on any goods or effects of a bankrupt or a company being wound up within *three months* next before the date of the receiving order or the winding-up order respectively, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof. Provided, that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as a person to whom such payment is made.

(5) "This section, so far as it relates to the property of a bankrupt, shall have effect as part of section forty of the Bankruptcy Act, 1883.

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(6) "This section shall apply, in the case of a deceased person who dies insolvent, as if he were a bankrupt, and as if the date of his death were substituted for the date of the receiving order."

By s. 40, sub-ss. 3—6 of the B. A. 1883:—

Joint and separate debts. S. 40 (3).

"In the case of partners the joint estate shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts. If there is a surplus of the separate estates it shall be dealt with as part of the joint estate. If there is a surplus of the joint estate it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate (cf. Rs. 127, 128, 293).

S. 40 (4).

"Subject to the provisions of this Act all debts proved in the bankruptcy shall be paid *pari passu*.

Surplus after payment of debts. S. 40 (5).

"If there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date of the receiving order at the rate of four pounds per centum per annum on all debts proved in the bankruptcy.

Partnership Act, 1865. Friendly Societies Act, 1875.

"Nothing in this section shall alter the effect of section 5 of the Act 28 & 29 Vict. c. 86, 'to Amend the Law of Partnership' [see now P. A., 1890, below], or shall prejudice the provisions of the Friendly Societies Act, 1875."

By the Friendly Societies Act, 1896, s. 35 (replacing the above), trustees of a friendly society have on the bankruptcy or liquidation by arrangement (*sic*) of the affairs of an officer of the society, who, as such officer, has in his possession money or property of the society, a right to receive such money or property in preference to other debts and claims against the estate. It would seem then that in such a case the debt due to or property claimed by the society would have priority over all other debts or claims (*y*), except perhaps the other preferential debt which will be found in the section relating to the administration of the property of a deceased debtor, s. 125 (7), *post*, p. 179 (*z*).

W. C. A. 1897.

Where an employer is liable, under the Workmen's Compensation Act, 1897, to pay compensation for an

(*y*) Though the money or property cannot be actually traced: see *In re Miller*, (1893) 1 Q. B. 327.

(*z*) This latter is not affected by the provisions of the 51 & 52 Vict. c. 62, *ante*; nor is the Stannaries Act, 1887 (50 & 51 Vict. c. 43): see ss. 2, 3 of the former Act.

accident to a workman, and is consequently entitled to be paid a sum by an insurance company, the workman has a first charge on such sum if the employer becomes bankrupt, or compounds or arranges with his creditors (W. C. A. 1897, s. 5).

Deferred Debts.—There are two classes of provable debts which we may call deferred; one by virtue of the provisions of the Partnership Act, 1890, and the other by the Married Women's Property Act, 1882. The effect of ss. 2 and 3 of the former is shortly this: that though the advance of money to a person engaged or about to engage in a trade or undertaking, on a contract that the lender is to receive interest varying with the profits or a share of the profits, will not of itself, provided that the contract is *in writing*, make the lender a partner, and though the receipt by the vendor of a goodwill by way of annuity or otherwise of a portion of the profits will not of itself make such a vendor a partner, yet in the event of the trader being adjudged bankrupt, or entering into an arrangement to pay his creditors less than 20*s.* in the pound, or dying involvent, a lender under such a contract, whether it be *in writing or oral* (*a*), cannot recover anything in respect of his loan, and the vendor of the goodwill cannot recover anything in respect of the share of profits contracted for, until the claims of the other creditors of the borrower or buyer for valuable consideration have been satisfied. It appears that such lender or such vendor cannot come in even to prove until the claims of all the other creditors for valuable consideration in money or money's worth have been satisfied (*b*).

Partnership Act, 1890.

As to the other class of deferred debts, s. 152 enacts that nothing in the Act is to affect the provisions of the M. W. P. Act, 1882, s. 3 of which provides, that a wife's money or other estate, lent or entrusted to her husband for the purpose of any trade or business carried on by him or otherwise, will be treated as assets of his estate in case of his bankruptcy; but the wife has a right to claim a dividend when the claims of all the other creditors for valuable consideration have been satisfied (*c*). But where she lends money to a partnership,

S. 152.

M. W. P. Act, 1882.

(*a*) *In re Fort*, (1897) 2 Q. B. 495.

(*b*) *Ex p. Taylor, In re Grason*, 12 Ch. D. 366.

(*c*) 45 & 46 Vict. c. 75, s. 3. *Semble*, as a rule, the onus will not be on her to show that she did not advance the money for the purpose of any trade or business of her husband: *In re Cronmire*, (1901) 1 K. B. 480; cf. *In re Genese*, 16 Q. B. D. 700.

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of which her husband is a member, she is entitled on the bankruptcy of the partnership to prove against the joint estate on the same footing as the other creditors (*d*). And where she has lent money to her husband for private purposes (*e*); or, being surety for him to a creditor, has paid the debt (*f*), she may prove in the bankruptcy with the other creditors.

Moneylenders Act, 63 & 64 Vict. c. 51.

By the Moneylenders Act, 1900, s. 1, where the amount charged by a moneylender for interest or otherwise is excessive, and the transaction is such that Equity would give relief, the Court may cut down the moneylender's proof, and ascertain what amount is reasonable (*g*).

Deferred interest.

Deferred Interest.—By s. 23 of the B. A. 1890, where a debt which has been proved includes interest, or any pecuniary consideration in lieu of interest, such interest or consideration will, for the purposes of *dividend*, be calculated at a rate not exceeding five per cent. per annum, and the creditor cannot receive any higher rate of interest until all the debts proved in the estate have been paid in full. This section only affects the creditor's rights as to dividend, and not as to proof (*h*), and it does not prevent a secured creditor from allocating his security to the interest, and then proving for the principal (*i*). But such a creditor cannot allocate his security to any interest accruing after the date of the receiving order (*k*).

S. 41. Preferential claim in case of apprentice or articled clerk.

Preferential Claim of Apprentice or Articled Clerk.—"Where at the time of the presentation of the bankruptcy petition any person is apprenticed or is an articled clerk to the bankrupt, the adjudication of bankruptcy shall, if either the bankrupt or apprentice or clerk gives notice in writing to the trustee to that effect, be a complete discharge of the indenture of apprenticeship or articles of agreement; and if any money has been paid by or on behalf of the apprentice or clerk to the bankrupt as a fee, the trustee may on the application of the apprentice or clerk, or of some person on his behalf, pay such sum as the

(*d*) *In re Tuff*, 19 Q. B. D. 88.
(*e*) *Ex p. Tidswell*, 35 W. R. 669; *Macintosh* v. *Pogose*, (1895) 1 Ch. 505; *In re Clark, Ex p. Schulze*, (1898) 2 Q. B. 330.
(*f*) *In re Cronmire, sup.*
(*g*) See *Wilton* v. *Osborne*, (1901) 2 K. B. 110.
(*h*) *In re Herbert*, 9 Mor. 253.
(*i*) *In re Fox and Jacobs*, (1894) 1 Q. B. 438.
(*k*) *In re Bonacino*, 1 Man. 59.

trustee, subject to an appeal to the Court, thinks reasonable, out of the bankrupt's property, to or for the use of the apprentice or clerk, regard being had to the amount paid by him or on his behalf, and to the time during which he served with the bankrupt under the indenture or articles before the commencement of the bankruptcy, and to the other circumstances of the case. Where it appears expedient to a trustee, he may, on the application of any apprentice or articled clerk to the bankrupt, or any person acting on behalf of such apprentice or articled clerk, instead of acting under the preceding provisions of this section, transfer the indenture of apprenticeship or articles of agreement to some other person" (s. 41).

Transfer of indenture.

Landlord's Power of Distress.—A landlord also has, in certain cases, a preferential right in his power of distress. S. 42, as amended by B. A. 1890, s. 28, provides that the landlord or other person to whom any rent is due from the bankrupt may at any time, either before or after the commencement of the bankruptcy, distrain upon the goods or effects of the bankrupt for the rent due to him from the bankrupt, with this limitation, that if such distress for rent be levied after the commencement of the bankruptcy it is to be available only for *six months'* rent accrued due prior to the date of the order of adjudication, but the landlord or other person to whom the rent may be due from the bankrupt may prove under the bankruptcy for the surplus due for which the distress may not have been available: cf. *ante*, p. 117.

Power of landlord to distrain for rent. S. 42.

For the purposes of this provision the term "order of adjudication" includes an order for the administration of the estate of a debtor whose debts do not exceed fifty pounds, or of a deceased person who dies insolvent (*l*). It has been held that these restrictions on a landlord's right of distress are not applicable in administrations in chancery (*m*).

The above provision does not apply to rent accrued due *after* the order of adjudication; so that if the trustee does not disclaim, and remains in possession, the landlord may distrain for all rent accruing due since the adjudication (*n*).

Periodical Payments.—When any rent or other payment falls due at stated periods, and the receiving order

(*l*) S. 42, and B. A. 1890, s. 28. See ss. 122 and 125, *post*, pp. 174, 178.
(*m*) *Fryman* v. *Fryman*, 38 Ch. D. 468.
(*n*) *Ex p. Hale*, 1 Ch. D. 285.

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is made at any time other than one of those periods, the person entitled to the rent or payment may prove for a proportionate part thereof up to the date of the order as if the rent or payment grew due from day to day (*o*).

Mutual Debts.—If a creditor who seeks to prove is himself indebted to the bankrupt, it would be unfair to make him pay his debt in full and allow him to receive only a dividend on the amount due to him. Accordingly s. 38 enacts, that "where there have been mutual credits, mutual debts, or other mutual dealings between a debtor against whom a receiving order shall be made under this Act, and any other person proving or claiming to prove a debt under such receiving order, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively; but a person shall not be entitled under this section to claim the benefit of any set-off against the property of the debtor in any case where he had at the time of giving credit to the debtor notice of an act of bankruptcy committed by the debtor and available against him."

S. 38.

The words mutual credits, mutual debts, and mutual dealings are all of importance. The phrase *mutual debts* applies to the simple case where two persons owe each other debts presently payable. *Mutual credits* would go further, and be applicable where a debt is immediately due from one party and only due at a future day from the other (*p*). *Mutual dealings* would meet a case where A. is owed a debt by B., but B. has a claim for unliquidated damages for breach of contract against A. (*q*). The operation of this section is not affected by the fact that one party holds a security for his debt. Thus where a bankrupt owed B. £3,010, and B. owed the bankrupt £88, and the bankrupt had a lien for that amount on some goods of B., it was held, under the corresponding section of the Act of 1869, that B. was entitled to have the sum of £88 set off against his claim, so as to

(*o*) Sch. II. (19).

(*p*) *Ex p. Prescot*, 1 Atk. 229.

(*q*) *Booth* v. *Hutchinson*, L. R. 15 Eq. 30; *Peat* v. *Jones*, 8 Q. B. D. 147; *Jack* v. *Kipping*, 9 Q. B. D. 113; *In re Daintry, Ex p. Mant, infra*, where at the date of the receiving order there was a liability of the bankrupt on a contract, which did not become an ascertained debt till afterwards.

free the goods from the lien, and to prove for the balance, and was not compelled to pay down £88 before his goods were delivered up (*r*). No right of set-off, however, arises unless the claims on each side are such as result in pecuniary liabilities, and so a debt cannot be set off against a claim for goods wrongfully detained, for the owner of the goods is entitled to their return in specie (*s*). But where there was a debt on one side and a delivery of property with directions to sell on the other, the section was held applicable (*t*). Again, where a debtor deposited money with A. for a specific purpose, which failed by reason of the debtor's bankruptcy, A. could not set off against the claim of the trustee to such money a debt due by the debtor to A. (*u*).

Line of set-off.

The line of set-off is, as a rule, to be drawn at the date of the receiving order, but it may be drawn at an earlier date where the party who has dealt with the bankrupt had notice of an available act of bankruptcy (*x*).

Where company is being wound up, solvent contributory has no right of set-off:

Where a limited company is being wound up under the Companies Acts, a solvent contributory cannot set off against calls made by the liquidator on him money due to him from the company (*y*); and the law on this point is not affected by s. 10 of the Judicature Act, 1875 (*z*). The same rule applies where the contributory is another company in liquidation (*a*). The reason of the rule appears to be that calls are made for the benefit of the creditors *pari passu*, but to allow a set-off would give one an advantage (*a*). Nor can the liquidator of the contributory company receive any dividend in the winding-up of the other company until he has paid all calls made in such winding-up (*b*). If, however, the contributory is a bankrupt, the bankruptcy rule prevails, and his trustee may set off against the calls any debt due from the winding-up company to the contributory (*c*).

but *aliter*, if he becomes bankrupt.

Accommodation Bills.—A person who puts his name on a bill or note for the accommodation of another stands in

(*r*) *Ex p. Barnett*, L. R. 9 Ch. 293.
(*s*) *Eberle's Hotel* v. *Jonas*, 18 Q. B. D. 459.
(*t*) *Palmer* v. *Day*, (1895) 2 Q. B. 618.
(*u*) *In re Pollitt*, (1893) 1 Q. B. 175, 455, *ante*, p. 68.
(*x*) *In re Daintry, Ex p. Mant*, (1900) 1 Q. B. 546: cf. under B. A. 1869, *Elliott* v. *Turquand*, 7 App. Cas. 39; *In re Gillespie*, 14 Q. B. D. 963.
(*y*) *In re Overend, Gurney & Co., Grissell's Case*, L. R. 1 Ch. 528.
(*z*) *Gill's Case*, 12 Ch. D. 755; *In re Washington, &c. Co.*, (1893) 3 Ch. 95.
(*a*) *In re Auriferous Properties, Ld.* (1), (1898) 1 Ch. 691.
(*b*) *In re Auriferous Properties, Ld.* (2), (1898) 2 Ch. 428.
(*c*) *In re Universal Banking Corporation*, L. R. 5 Ch. 492.

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the position of a surety (*d*); and if the other becomes bankrupt, the surety, if he pays the amount, may prove against the estate.

Where two parties have put their names on such paper for the accommodation of each other, and one of them becomes bankrupt, the other may prove against the estate when he has taken up his own paper, and so exonerated the estate in respect of it (*e*). To allow the solvent party and the holder of the bills or notes both to prove against the estate would be to permit double proof in respect of the same debt, which is contrary to bankruptcy law (*f*).

Where both the parties to such an exchange of accommodation paper become bankrupt, it has long been the rule that there can be no proof by either estate against the other for the amount of the outstanding bills or notes: the cash balance—that is, what either bankrupt has actually paid on the bills or notes—can alone be proved (*g*); unless, indeed, after the holders of the paper have been satisfied, there should be a surplus of the estate ultimately indebted, in which case proof might be made (*h*). The reason why neither estate is allowed to prove seems to be this: that as the bills or notes can be proved by the holders against both estates, to allow one estate proof against the other would be to allow it to enter into competition with its own creditors and lessen the fund out of which they might be paid (*h*).

Distinct Contracts.—If a debtor was at the date of the receiving order liable in respect of distinct contracts as a member of two or more distinct firms, or as a sole contractor, and also as a member of a firm, the circumstance that the firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, will not prevent proof in respect of the contracts against the properties respectively liable on the contracts (*i*). Thus, where a joint and several promissory note was signed by two members of a firm, by the firm, and by several other persons, and the firm became

(*d*) *Haigh* v. *Jackson*, 3 M. & W. 598.
(*e*) *Ex p. Bowness*, Cooke, Bankruptcy Law, 183.
(*f*) *Ex p. Read*, 1 Gl. & J. 224.
(*g*) *Ex p. Walker*, 4 Ves. 373.
(*h*) *Ex p. Laforest*, 2 D. & Ch. 199.
(*i*) Sch. II. (18).

bankrupt, the holder of the note was allowed to prove against both the joint estate of the firm and the separate estates of the two partners who had signed the note (*k*). But there must be two distinct estates, and therefore, where two persons, trading in London as Hooper & Sons, and in Oporto as Hooper Brothers, became liquidating debtors here, and were declared insolvent under Portuguese law in Portugal, the Banco de Portugal, which, as holder of bills drawn by the Portuguese house upon and accepted by the London house, had received a dividend under the Portuguese insolvency proceedings, was not allowed to prove against the estate here, except on the terms of bringing the dividend so received into the common fund (*l*).

Interest.—On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the receiving order and provable in bankruptcy, the creditor may prove for interest at a rate not exceeding four per centum per annum to the date of the order from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time; and if payable otherwise, then from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment (*m*).

Debts Payable at a Future Time.—A creditor may prove for a debt not payable when the debtor committed an act of bankruptcy as if it were payable presently, and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of five pounds per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted (*n*). Where a debt is by contract payable at a future time, with interest in the meantime, and the debtor becomes bankrupt before the time for payment, the creditor may prove for

(*k*) *Ex p. Honey*, L. R. 7 Ch. 178.
(*l*) *Banco de Portugal* v. *Waddell*, 5 App. Cas. 161.
(*m*) Sch. II. (20). See further as to rate of interest to be calculated for dividend, *ante*, p. 120. As to interest *from* the date of the receiving order, where there is a surplus, see s. 40, *ante*, p. 118.
(*n*) Sch. II. (21).

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interest accruing after the receiving order. In such a case the creditor proves the principal sum as a present debt, but the rebate just mentioned is to be deducted from the dividend; then he values and proves for the liability to pay interest, the dividend on which is not liable to rebate as the above rule only applies to debts. If interest at five per cent. is contracted for, the principal sum may be proved for as a present debt, and no rebate deducted from the dividend (*o*).

Secured creditors.

Secured Creditors.—A secured creditor, that is, a person holding a mortgage, charge, or lien on the property of the debtor, or any part thereof, as a security for a debt due to him from the debtor, may adopt one of three courses: he may either (1) realise his security and prove for the balance then due to him, or (2) surrender his security and prove for his whole debt, or (3) he may state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, in which case he will be entitled to receive a dividend only in respect of the balance due to him after deducting such assessed value (Sch. 2 (9—12). Other rules in Sch. 2 enable a trustee within a certain time to redeem or require to be sold a security which has been so valued, and allow a secured creditor under certain conditions to amend his valuation and proof if made on a mistaken estimate. It is important that secured creditors should comply with these rules, as non-compliance therewith will exclude them from all share in any dividend (Sch. 2, Rs. 9—17).

Declaration and distribution of dividends.

Dividends.—Subject to the retention of such sums as may be necessary for the costs of administration, or otherwise, the trustee is, with all convenient speed, to declare and distribute dividends amongst the creditors who have proved their debts.

First dividend.

The first dividend, if any, is to be declared and distributed within *four* months after the conclusion of the first meeting of creditors, unless the trustee satisfies the committee that there is sufficient reason for postponing the declaration to a later date. In a small bankruptcy this period is extended to *six* months (R. 273 (12).

Subsequent dividends.

Subsequent dividends are, in the absence of sufficient reason to the contrary, to be declared and distributed at intervals of not more than *six* months.

(*o*) *In re Browne and Wingrove*, (1891) 2 Q. B. 574.

Notice of dividends.

Before declaring a dividend the trustee must cause notice of his intention to do so to be gazetted, and also send reasonable notice thereof to each creditor mentioned in the bankrupt's statement who has not proved his debt. When the trustee has declared a dividend he must send to each creditor who has proved a notice showing the amount of the dividend, and when and how it is payable, and a statement in the prescribed form as to the particulars of the estate (s. 58 : see Rs. 232—234).

Joint and separate dividends.

Where one partner of a firm is adjudged bankrupt, a creditor to whom the bankrupt is indebted jointly with the other partners of the firm, or any of them, cannot receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts.

Where joint and separate properties are being administered, dividends of these properties are, subject to any order to the contrary that may be made by the Court, to be declared together ; and the expenses of and incident to such dividends are to be fairly apportioned by the trustees between the joint and separate properties, regard being had to the work done for and the benefit received by each property (s. 59 : see Rs. 127, 128, 293).

Provision for creditors residing at a distance, &c.

In calculating and distributing a dividend the trustee must make provision for provable debts appearing, from the bankrupt's statements or otherwise, to be due to persons resident in places so distant from the place where the trustee is acting that in the ordinary course of communication they have not had sufficient time to tender their proofs, or to establish them if disputed, and also for provable debts, the subject of claims not yet determined. He must also make provision for any disputed proofs or claims, and for the expenses necessary for the administration of the estate or otherwise, and, subject to the foregoing provisions, he is to distribute as dividend all money in hand (s. 60).

Right of creditor who has not proved debt before declaration of a dividend.

Any creditor who has not proved his debt before the declaration of any dividend or dividends, will be entitled to be paid out of any money for the time being in the hands of the trustee any dividend or dividends he may have failed to receive before that money is applied to the payment of any future dividend or dividends, but he cannot disturb the

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distribution of any dividend declared before his debt was proved by reason that he has not participated therein (s. 61).

Final dividend.

When the trustee has realised all the property of the bankrupt, or so much thereof as can, in the joint opinion of himself and of the committee, be realised without needlessly protracting the trusteeship, he is to declare a final dividend, but before so doing he must give notice in manner prescribed to the persons whose claims to be creditors have been notified to him, but not established to his satisfaction, that if they do not establish their claims to the satisfaction of the Court within a time limited by the notice, he will proceed to make a final dividend, without regard to their claims. After the expiration of that time, or of any further time allowed by the Court, the property of the bankrupt is to be divided among the creditors who have proved their debts, without regard to the claims of any other persons (s. 62).

No action for dividend.

No action for a dividend will lie against the trustee, but if the trustee refuses to pay any dividend the Court may, if it thinks fit, order him to pay it, and also to pay out of his own money interest thereon for the time that it is withheld, and the costs of the application (s. 63 : see also R. 211 as to compositions or schemes).

An assignee of a dividend cannot compel the trustee to pay him (*p*).

No garnishee proceedings.

A dividend distributable in a bankruptcy, not being a debt due from the official receiver or trustee to the creditor to whom it is payable, cannot be attached by garnishee proceedings to answer a judgment obtained against the creditor (*q*).

Right of bankrupt to surplus.

The bankrupt will be entitled to any surplus remaining after payment in full of his creditors, with interest, as by the Act provided, and of the costs, charges, and expenses of the proceedings under the bankruptcy petition (s. 65) (*r*).

He may, though undischarged, make a disposition, by assignment or otherwise, of a possible surplus, but neither he nor his assignee can interfere in the bankruptcy

(*p*) *In re Frost*, (1899) 2 Q. B. 50.
(*q*) *Prout* v. *Gregory*, 24 Q. B. D. 281.
(*r*) See further as to dividends, Rs. 232—234.

administration. Such disposition will be good against a trustee in a second bankruptcy (*s*).

Unclaimed Funds or Dividends.—The Board of Trade exercises control over trustees and others who retain unclaimed or undistributed funds or dividends in their hands. S. 162, on this subject, may be summarised thus:—

S. 162.

(A) A trustee in a bankruptcy, composition, or scheme under this Act is to pay into the Bankruptcy Estates Account at the Bank of England, (1) Dividends under his control which have remained unclaimed for more than six months: (2) Unclaimed or undistributed moneys arising from the property of the debtor under his control after a final dividend.

(B) A trustee or other person empowered to collect, receive, or distribute funds or dividends under the Private Arrangement Act of 1844, the Bankrupt Law Consolidation Act, 1849, the Bankruptcy Acts, 1861 and 1869, or any petition, resolution, deed, or other proceeding under or in pursuance of any of them, who has under his control, after the passing of the Act of 1883, any funds or dividends which have been unclaimed or undistributed for six months after the same became claimable or distributable, or in any other case for two years after the receipt thereof by such trustee or other person, is to pay the same to the Bankruptcy Estates Account at the Bank of England.

In each of these cases the Board will give the person paying the money a receipt, which will discharge him.

(C) The Board may order such trustee or other person to submit an account verified by affidavit of moneys received or paid by him under such petition, &c., and may direct an audit thereof.

(D) The Board may appoint a person to collect and get in unclaimed or undistributed funds or dividends, and for this purpose the Court may exercise, with necessary modifications, the powers in the Act as to the discovery and realisation of a debtor's property.

(E) Except so far as is expressly declared, these provisions do not deprive a person of any other right or remedy which he may have against such trustee or other person.

(*s*) *Bird* v. *Philpott*, (1900) 1 Ch. 822.

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(F) A person entitled to moneys paid into the Bankruptcy Estates Account under these provisions may apply to the Board, who may, if satisfied that his claim is good, order payment to him. Such person, if dissatisfied with the decision of the Board, may appeal to the High Court (*t*).

(*t*) See also Rs. 300, 345, 346, 346A.

CHAPTER VII.

CONDUCT OF THE DEBTOR, AND CONTROL EXERCISED OVER HIM.

Duties of the Debtor.—The following duties are imposed on the debtor, when a receiving order has been made:— S. 24.

He must (1) submit to the official receiver a statement of his affairs (s. 16, *ante*, p. 52):

(2) Unless prevented by sickness or other sufficient cause, attend the first meeting, and submit to such examination (*a*) and give such information as the meeting may require:

(3) Give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend such other meetings of his creditors, wait at such times on the official receiver, special manager, or trustee, execute such powers of attorney, conveyances, deeds, and instruments, and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors, as may be reasonably required by the official receiver, special manager, or trustee, or may be prescribed by general rules, or be directed by the Court by any special order or orders made in reference to any particular case, or made on the occasion of any special application by the official receiver, special manager, trustee, or any creditor or person interested:

(4) If adjudged bankrupt, aid, to the utmost of his power, in the realisation of his property and the distribution of the proceeds among his creditors (s. 24).

We have seen before (*ante*, p. 52), that failure without reasonable excuse to submit the statement of affairs within the required time renders the debtor liable to be adjudged

(*a*) He need not submit to a medical examination for the purpose of enabling the trustee to insure his life: *Board of Trade* v. *Block*, 13 App. Cas. 570.

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bankrupt (*b*): as to the other duties above mentioned, if a debtor wilfully fails to perform them, or to deliver up possession of any part of his property, which is divisible amongst his creditors under the Act, and which is for the time being in his possession or under his control, to the official receiver or to the trustee, or to any person authorised by the Court to take possession of it, he will, in addition to any other punishment to which he may be subject, be guilty of a contempt of Court, and may be punished accordingly (s. 24). The bankrupt has a right of appeal from an order committing him for contempt under this section (*c*).

S. 26.

Re-direction of Debtor's Letters.—Where a receiving order is made against a debtor, the Court, on the application of the official receiver or trustee, may from time to time order that for such time, not exceeding three months, as the Court thinks fit, post letters addressed to the debtor at any place, or places mentioned in the order for re-direction, shall be re-directed, sent, or delivered by the Postmaster-General, or the officers acting under him, to the official receiver, or the trustee, or otherwise as the Court directs, and the same shall be done accordingly (s. 26).

S. 25.
Arrest of debtor under certain circumstances.

Arrest of the Debtor.—By s. 25, "The Court may, by warrant addressed to any constable or prescribed officer of the Court, cause a debtor to be arrested, and any books, papers, money, and goods in his possession to be seized, and him and them to be safely kept as prescribed until such time as the Court may order under the following circumstances:

(*a*) "If, *after a bankruptcy notice has been issued* under this Act, *or after presentation of a bankruptcy petition* by or against him, it appears to the Court that there is a probable reason for believing that he *has absconded, or* (*d*) is about to abscond with a view of avoiding payment of the debt in respect of which the bankruptcy notice was issued, or of avoiding service of a bankruptcy petition, or of avoiding appearance to any such petition, or of avoiding examination in respect of his affairs, or

(*b*) See R. 324.
(*c*) *In re Ashwin*, 25 Q. B. D. 271.
(*d*) See *Reg.* v. *Judge of Northallerton C. C.*, (1898) 2 Q. B. 650; in H. of L. *Skinner* v. *Judge, &c.*, (1899) App. Cas. 439; *ante*, p. 44.

of otherwise avoiding, delaying, or embarrassing proceedings in bankruptcy against him.

(*b*) "If, *after presentation of a bankruptcy petition* by or against him, it appears to the Court that there is probable cause for believing that he is about to remove his goods with a view of preventing or delaying possession being taken of them by the official receiver or trustee, or that there is probable ground for believing that he has concealed or is about to conceal or destroy any of his goods, or any books, documents, or writings, which might be of use to his creditors in the course of his bankruptcy.

(*c*) "If, *after service of a bankruptcy petition* on him, or *after a receiving order is made* against him, he removes any goods in his possession above the value of five pounds, without the leave of the official receiver or trustee.

(*d*) "If, without good cause shown, he fails to attend any examination ordered by the Court.

"Provided that no arrest upon a bankruptcy notice shall be valid and protected unless the debtor before or at the time of his arrest shall be served with such bankruptcy notice (*e*).

"No payment or composition made or security given after arrest made under this section shall be exempt from the provisions of this Act relating to fraudulent preferences" (*f*).

Application of Trustee Act, 1893, to bankruptcy of a trustee.

Bankrupt Trustee.—By s. 25 (1) of the Trustee Act, 1893, where any person who is a trustee is bankrupt a new trustee may be appointed in his stead. This re-enacts s. 147 of the B. A. 1883, which is repealed by s. 51 of the former Act.

(*e*) See R. 84.

(*f*) *Ante*, p. 86.

CHAPTER VIII.

THE TRUSTEE.

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We have dealt with the appointment of the trustee, and the evidence thereof (*ante*, pp. 12, 61), and we propose now to bring together, for the sake of convenience, other provisions as to his position, powers, and duties.

S. 84.
Power to appoint joint or successive trustees.

Appointment and Removal.—The creditors may, if they think fit, appoint more persons than one to the office of trustee, and when more persons than one are appointed they shall declare whether any act required or authorised to be done by the trustee is to be done by all or any one or more of such persons, but all such persons are in this Act included under the term "trustee," and shall be joint tenants of the property of the bankrupt. The creditors may also appoint persons to act as trustees in succession in the event of one or more of the persons first named declining to accept the office of trustee, or failing to give security, or not being approved of by the Board of Trade (s. 84).

S. 85.
Office of trustee vacated by insolvency.

If a receiving order is made against a trustee he shall thereby vacate his office of trustee (s. 85). But if the order is rescinded, on the ground that it ought never to have been made, he will be restored to his office, if no new trustee has been appointed (*a*).

S. 86.
Removal of trustee by creditors,

The creditors may, by ordinary resolution, at a meeting specially called for that purpose, of which seven days' notice has been given, remove a trustee appointed by them, and may at the same or any subsequent meeting appoint another person to fill the vacancy as hereinafter provided in case of a vacancy in the office of trustee.

by Board of Trade.

If the Board of Trade are of opinion that a trustee appointed by the creditors is guilty of misconduct, or fails to perform his duties under this Act, the Board may remove

(*a*) *In re Newman, Ex p. O. R.*, (1899) 2 Q. B. 587.

him from his office, but if the creditors, by ordinary resolution, disapprove of his removal, he or they may appeal against it to the High Court (s. 86) (*b*).

Bankruptcy Act, 1890, s. 19.

The power of the Board to remove a trustee under s. 86 now extends "to any case in which the Board are of opinion that the trustee is, by reason of lunacy, or continued sickness, or absence, incapable of performing his duties, or that his connection with or relation to the bankrupt, or his estate, or any particular creditor, might make it difficult for him to act with impartiality in the interest of the creditors generally, or where in any other matter he has been removed from office on the ground of misconduct" (*c*).

S. 87.

Proceedings in case of vacancy in office of trustee.

If a vacancy occurs in the office of a trustee the creditors in general meeting may appoint a person to fill the vacancy, and thereupon the same proceedings are to be taken as in the case of a first appointment. The official receiver must, on the requisition of any creditor, summon a meeting for the purpose of filling any such vacancy.

If the creditors do not within three weeks after the occurrence of a vacancy appoint a person to fill the vacancy, the official receiver is to report the matter to the Board of Trade, and the Board may appoint a trustee; but in such case the creditors or committee of inspection will have the same power of appointing a trustee as in the case of a first appointment. During any vacancy in the office of trustee the official receiver is to act as trustee (s. 87: see R. 307).

S. 54.

Vesting and Transfer of Property.—Until a trustee is appointed the official receiver will be the trustee for the purposes of the Act, and immediately on a debtor being adjudged bankrupt, the property of the bankrupt vests in the trustee. The official receiver, whilst he is so trustee, has power to sell the property of the bankrupt, even such as is not of a perishable nature (*d*).

On the appointment of a trustee the property forthwith passes to and vests in the trustee appointed (*e*).

The property of the bankrupt passes from trustee to trustee, including under that term the official receiver when he fills the office of trustee, and vests in the trustee for the

(*b*) See Rs. 292, 301—303, 311, 319.
(*c*) B. A. 1890, s. 19: see p. 61, *ante*.
(*d*) *Turquand* v. *Board of Trade*, 11 App. Cas. 286.
(*e*) See R. 318.

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time being during his continuance in office, without any conveyance, assignment, or transfer whatever.

Certificate of appointment deemed a conveyance of property.

The certificate of appointment of a trustee will, for all purposes of any law in force in any part of the British dominions requiring registration, inrolment, or recording of conveyances or assignments of property, be deemed to be a conveyance or assignment of property, and may be registered, inrolled, and recorded accordingly (s. 54). This certificate,

Land in Middlesex.

where the bankrupt has land in Middlesex, should be registered by the trustee in the Middlesex Registry, so that he may have a good title against a subsequent mortgagee from the bankrupt: this is unnecessary in a small bankruptcy where there is no certificate, and the official receiver is trustee (*f*).

38 & 39 Vict. c. 87.

By s. 48 of the Land Transfer Act, 1875, where the registered proprietor of any land or charge becomes bankrupt, or his affairs are liquidated by arrangement, his trustee will be entitled to be registered: but not till the

60 & 61 Vict. c. 65.

Bankruptcy Court certifies that the land or charge is property of the bankrupt divisible amongst his creditors. Pending the appointment of trustee the official receiver may be registered (Land Transfer Act, 1897, Sch. I.).

S. 50.

Realisation of Property.—The trustee shall, as soon as

Possession of property by trustee.

may be, take possession of the deeds, books, and documents of the bankrupt, and all other parts of his property capable of manual delivery. If, however, the bankrupt has sold his book debts, the trustee cannot claim the books (*g*).

Trustee to have powers of receiver.

The trustee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the bankrupt, be in the same position as if he were a receiver of the property appointed by the High Court, and the Court may, on his application, enforce such acquisition or retention.

Trustee's powers as to stock, shares,

Where any part of the property of the bankrupt consists of stock, shares in ships, shares, or any other property transferable in the books of any company, office, or person, the trustee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt.

(*f*) *In re Calcott and Elvin's Contract*, (1898) 2 Ch. 460, *post*, Chap. XII.
(*g*) *In re White*, 1 Mor. 77 : cf. R. 349.

copyholds,

Where any part of the property of the bankrupt is of copyhold or customary tenure, or is any like property passing by surrender and admittance or in any similar manner, the trustee shall not be compellable to be admitted to the property, but may deal with it in the same manner as if it had been capable of being and had been duly surrendered or otherwise conveyed to such uses as the trustee may appoint; and any appointee of the trustee shall be admitted to or otherwise invested with the property accordingly.

and choses in action.

Where any part of the property of the bankrupt consists of *things in action*, such things shall be deemed to have been duly assigned to the trustee (*h*).

Agents of bankrupt and others to pay moneys to trustee.

Any treasurer or other officer, or any banker, attorney, or agent of a bankrupt, shall pay and deliver to the trustee all money and securities in his possession or power, as such officer, banker, attorney, or agent, which he is not by law entitled to retain as against the bankrupt or the trustee. If he does not he shall be guilty of a contempt of Court, and may be punished accordingly on the application of the trustee (s. 50).

S. 83.
Official name of trustee.

Official Name.—The trustee may sue and be sued by the official name of "the trustee of the property of a bankrupt," inserting the name of the bankrupt, and by that name may in any part of the British dominions or elsewhere hold property of every description, make contracts, sue and be sued, enter into any engagements binding on himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office (s. 83).

S. 72.
Remuneration of trustee: how fixed:

Remuneration.—Where the creditors appoint any person to be trustee of a debtor's estate, his remuneration (if any) shall be fixed by an ordinary resolution of the creditors, or, if the creditors so resolve, by the committee of inspection, and shall be in the nature of a commission or percentage, of which one part shall be payable on the amount realised, after deducting any sums paid to secured creditors out of

(*h*) But he takes them merely as statutory assignee, and subject to equities. So that (*e.g.*) he cannot, by giving notice to an insurance company, obtain priority over a mortgagee of a policy of insurance who has given no notice: *In re Wallis, Ex p. Jenks*, (1902) 1 K. B. 719: cf. *Mercer* v. *Vans Colina*, 4 Man. 363.

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the proceeds of their securities, and the other part on the amount distributed in dividend (*i*).

That part of the remuneration payable on the amount realised is payable only on the amount realised by the trustee (B. A. 1890, s. 15 (1)).

Realised means realised by the trustee, and not by the official receiver. It would not include a sum paid by bankrupt's friends to annul an adjudication or provide a composition, even though the committee vote the trustee commission on the amount "brought to credit," which is *ultra vires*. *Distributed in dividend* seems to mean distributed out of assets realised by the trustee (*k*).

when fixed by Board of Trade :

If one-fourth in number or value of the creditors dissent from the resolution, or the bankrupt satisfies the Board of Trade that the remuneration is unnecessarily large, the Board of Trade shall fix the amount of the remuneration.

what expenses to cover :

The resolution shall express what expenses the remuneration is to cover, and no liability shall attach to the bankrupt's estate, or to the creditors, in respect of any expenses which the remuneration is expressed to cover (s. 72).

Where the resolution has been passed and work done under it, the creditors or committee cannot reduce the remuneration simply by another resolution (*l*).

where trustee acts without remuneration.

Where a trustee acts without remuneration, he shall be allowed out of the bankrupt's estate such proper expenses incurred by him in or about the proceedings of the bankruptcy as the creditors may, with the sanction of the Board of Trade, approve (*m*).

What arrangements respecting his remuneration are forbidden.

A trustee shall not, under any circumstances whatever, make any arrangement for or accept from the bankrupt, or any solicitor, auctioneer, or any other person that may be employed about a bankruptcy, any gift, remuneration, or pecuniary or other consideration or benefit whatever beyond the remuneration fixed by the creditors and payable out of the estate, nor shall he make any arrangement for giving up, or give up, any part of his remuneration, either as receiver, manager, or trustee, to the bankrupt, or any solicitor or other person that may be employed about a bankruptcy (s. 72).

(*i*) See R. 305 : Sch. I. (20). See also R. 270.
(*k*) *In re Christie*, (1900) 1 Q. B. 5.
(*l*) *In re Marsden*, 9 Mor. 70.
(*m*) B. A. 1890, s. 15 (2).

S. 73.

Allowance and taxation of costs.

Costs.—Where a trustee or manager receives remuneration for his services as such, no payment shall be allowed in his accounts in respect of the performance by any other person of the ordinary duties which are required by statute or rules to be performed by himself.

Where the trustee is a solicitor he may contract that the remuneration for his services as trustee shall include all professional services (*n*); but even in such a case the remuneration must be in the nature of a commission or percentage as prescribed by s. 72, *supra* (*o*).

Bills to be taxed.

All bills and charges of solicitors, managers, accountants, auctioneers, brokers, and other persons, not being trustees, shall be taxed by the prescribed officer, and no payments in respect thereof shall be allowed in the trustee's accounts without proof of such taxation having been made. The taxing-master shall satisfy himself before passing such bills and charges that the employment of such solicitors and other persons, in respect of the particular matters out of which such charges arise, has been duly sanctioned.

Within what time to be sent for taxation.

Every such person shall, on request by the trustee (which request the trustee shall make a sufficient time before declaring a dividend), deliver his bill of costs or charges to the proper officer for taxation, and if he fails to do so within seven days after receipt of the request, or such further time as the Court, on application, may grant, the trustee shall declare and distribute the dividend without regard to any claim by him, and thereupon any such claim shall be forfeited as well against the trustee personally as against the estate (*p*). The sanction above required for the employment of solicitors and other persons must be a sanction obtained before the employment, except in cases of urgency, and in such cases it must be shown that no undue delay took place in obtaining the sanction (*q*). A solicitor employed by the trustee has no lien on the estate for his costs, and the Court will rarely make a charging order in his favour under s. 28 of the Solicitors Act, 1860 (*r*).

(*n*) S. 73.
(*o*) *In re Wayman*, 24 Q. B. D. 68.
(*p*) S. 73: see Rs. 104—128.
(*q*) B. A. 1890, s. 15 (3). See s. 57, *post*, p. 151, and Chap. XV.
(*r*) *In re Humphreys*, (1898) 1 Q. B. 520. See *In re Deakin*, (1900) 2 Q. B. 489, where a receiving order having been set aside with costs by Court of Appeal, debtor's solicitor got a charging order on the costs from Bankruptcy judge. Cf. also *In re Cook*, (1899) 1 Q. B. 863.

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S. 88. Limitation of voting powers of trustee.

Voting Powers of Trustee.—The vote of the trustee, or of his partner, clerk, solicitor, or solicitor's clerk, either as creditor or as proxy for a creditor, shall not be reckoned in the majority required for passing any resolution affecting the remuneration or conduct of the trustee (*s*).

Disclaimer of Onerous Property.—By s. 55 :—

S. 55. Disclaimer of onerous property :

(1) "Where any part of the property of the bankrupt consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the trustee, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, but subject to the provisions of this section, may, by writing signed by him, at any time within *twelve* (*t*) months after the first appointment of a trustee, disclaim the property : Provided that where any such property shall not have come to the knowledge of the trustee within one month after such appointment, he may disclaim such property at any time within *twelve* (*t*) months after he first became aware thereof.

within what time.

Effect of disclaimer.

(2) "The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests, and liabilities of the bankrupt, and his property in or in respect of the property disclaimed, and shall also discharge the trustee from all personal liability in respect of the property disclaimed as from the date when the property vested in him (*u*), but shall not, except so far as is necessary for the purpose of releasing the bankrupt and his property and the trustee from liability, affect the rights or liabilities of any other person.

Disclaimer of leaseholds.

(3) "A trustee shall not be entitled to disclaim a lease without the leave of the Court, except in any cases which may be prescribed by general rules ; and the Court may, before or on granting such leave, require such notices to be

(*s*) S. 88 : see Sch. I. (20, 26).

(*t*) This period, fixed by the B. A. 1890, s. 13, may be extended by the Court.

(*u*) But the disclaimer will not release the trustee from the consequences of his *wrongful* acts in dealing with the property : *Schofield* v. *Hincks*, 37 W. R. 157 : but cf. *In re Finley*, 21 Q. B. D. 485.

given to persons interested, and impose such terms as a condition of granting leave, and make such orders with respect to fixtures, tenant's improvements, and other matters arising out of the tenancy as the Court thinks just (*x*).

When right of disclaimer lost.

(4) "The trustee shall not be entitled to disclaim any property in pursuance of this section in any case where an application in writing has been made to the trustee by any person interested in the property requiring him to decide whether he will disclaim or not, and the trustee has for a period of twenty-eight days after the receipt of the application, or such extended period as may be allowed by the Court, declined or neglected to give notice whether he disclaims the property or not; and in the case of a contract, if the trustee, after such application as aforesaid, does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.

Court may order rescission of contract on terms.

(5) "The Court may, on the application of any person who is, as against the trustee, entitled to the benefit or subject to the burden of a contract made with the bankrupt, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as to the Court may seem equitable, and any damages payable under the order to any such person may be proved by him as a debt under the bankruptcy.

Vesting order by Court, as to property disclaimed:

(6) "The Court may, on application by any person either claiming any interest in any disclaimed property, or under any liability not discharged by this Act in respect of any disclaimed property, and on hearing such persons as it thinks fit, make an order for the *vesting* of the property in or delivery thereof to any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose.

as to leaseholds.

"Provided always, that where the property disclaimed is of a leasehold nature, the Court shall not make a vesting

(*x*) See R. 320.

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order in favour of any person claiming under the bankrupt, whether as underlessee or as mortgagee by demise, except upon the terms of making such person subject to the same liabilities and obligations as the bankrupt was subject to under the lease in respect of the property at the date when the bankruptcy petition was filed, and any mortgagee or underlessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and if there shall be no person claiming under the bankrupt who is willing to accept an order upon such terms, the Court shall have power to vest the bankrupt's estate and interest in the property in any person liable either personally or in a representative character, and either alone or jointly with the bankrupt to perform the lessee's covenants in such lease, freed and discharged from all estates, incumbrances, and interests created therein by the bankrupt (*y*).

Persons injured by disclaimer may prove.

(7) "Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the bankrupt to the extent of the injury, and may accordingly prove the same as a debt under the bankruptcy."

The "property" that may be disclaimed under the above section (which, it may be mentioned, is binding on the Crown (*z*)), is not restricted to property divisible amongst the creditors, but includes any property burdened with onerous covenants or obligations that may have been vested in the bankrupt at the time of the bankruptcy (*a*). But where property vested in the trustee is not so burdened, where, for instance, he has a mere equity of redemption in a lease mortgaged by the bankrupt by way of assignment, no disclaimer is necessary, the trustee not being liable on the covenants in the lease either by privity of contract or privity of estate (*b*).

The above section adopts many of the decisions on s. 23 of the Act of 1869. It will be noticed that the trustee must exercise his right of disclaimer within a limited period, but the Court may extend the time upon reasonable grounds, and if the rights of other parties will be thereby prejudiced,

(*y*) Cf. p. 147, *post*.
(*z*) *In re Thomas*, 21 Q. B. D. 380 : see *ante*, p. 9.
(*a*) *In re Maughan*, 14 Q. B. D. 956.
(*b*) *In re Gee*, 24 Q. B. D. 65.

it will put the trustees upon terms (*c*). Where the trustee, after notice from the landlord under sub-s. 4, does not give notice of his intention within the prescribed period, he will render himself liable for rent and costs (*d*).

The trustee must obtain the leave of the Court to disclaim a lease, subject to any exceptions contained in the rules, as to which see R. 320. Under the late Act the Court when allowing a disclaimer of a lease imposed terms on the trustee (*e.g.*, that he should pay the rent up to a certain day), when a special case is made out for them, if, for instance, it was shown that his occupation of the premises produced a benefit to the estate, or was contemplated as likely to do so (*e*); and this practice will still be followed (*f*). Where, as in small bankruptcies, a lease may be disclaimed without leave under R. 320, the Court has no jurisdiction to impose terms (*g*). Sub-s. 2 differs from the provision in the late Act, as by it the disclaimer now determines *as from the date of disclaimer*, and not from the date of the order of adjudication, the rights, interests, and liabilities of the bankrupt in or in respect of the property disclaimed, though it discharges the trustee from personal liability as from the date when the property vested in him.

Terms may be imposed on trustee disclaiming lease.

As to *contracts* it will be noticed that now, by sub-s. 4, if the trustee does not disclaim a contract within a limited time after application has been made to him, he will be deemed to have adopted it; and by sub-s. 5 the party entitled to the benefit or subject to the burden of a contract made with the bankrupt may apply to the Court to rescind it (*h*).

Disclaimer of contracts.

To enable the trustee to get rid of onerous property, and beyond that not to interfere with the rights and liabilities of others, is the cardinal note of the section (sub-s. 2). Merely that it is more beneficial to the estate to disclaim a contract by which property has passed to a third person is not sufficient. So the trustee cannot disclaim a contract to *sell* leaseholds unless he disclaims the lease itself (*i*). Where

Contracts as to leaseholds.

(*c*) *In re Price*, 13 Q. B. D. 466.
(*d*) *In re Page*, 14 Q. B. D. 401.
(*e*) *Ex p. Isherwood*, 22 Ch. D. 384; *Ex p. Arnal*, 24 Ch. D. 26.
(*f*) *In re Zappert*, 1 Mor. 72; *In re T. Brooke, Ib.*, 82.
(*g*) *In re Sandwell*, 14 Q. B. D. 960.
(*h*) Under the Act of 1869, the trustee would not have been deemed to have adopted the contract; see *Ex p. Davis, In re Sneezum*, 3 Ch. D. 463. Where the contract is adopted it is not clear whether the trustee is personally liable.
(*i*) *In re Bastable*, (1901) 2 K. B. 518.

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a trustee purported to disclaim such a contract, without disclaiming the lease, the disclaimer was held a nullity and specific performance was ordered (*k*). But it would not be ordered against the trustee in bankruptcy of a *purchaser* (*k*).

Proof by landlord on disclaimer of lease.

Where a lease has been disclaimed, and the landlord cannot re-let the land at so high a rent as before, he is entitled to prove for the amount of the rent reserved by the lease for the remainder of the term minus what he can get from another tenant (*l*).

Effect of disclaimer of lease.

The effect of a disclaimer of a lease is to relieve the bankrupt and his property and the trustee (*m*) from liability, but it does not otherwise affect the rights and liabilities of third parties in relation to the property disclaimed; and so where a lessee granted an underlease, and afterwards became bankrupt, a disclaimer of the lease by his trustee was held not to affect the right of the lessor to distrain on the premises for the rent reserved by the original lease, and to re-enter in due course for the breach of the lessee's covenants in the lease, or for non-payment of the rent reserved thereby (*n*). In such a case, however, if the underlease were made at a rent less than that reserved by the original lease, the underlessee, after the disclaimer, would be entitled to prove in the bankruptcy for the value of the difference between the two rents (*n*). The proviso in sub-s. 6, as amended by the Act of 1890, enables the Court to make an order vesting the property in the underlessee, subject to the same liabilities and obligations as the bankrupt was subject to under the lease at the date of the petition (*o*), or, in a proper case, such as would be incurred by an assignment of the lease to him on that date.

Decisions on disclaimer of leases.

Again, the mere fact that the lessee has become bankrupt and that his trustee has disclaimed, does not entitle the lessor to recover the premises from the underlessee (*p*). And, on the same principle, where the assignee of a lease

(*k*) *Pearce* v. *Bastable's Trustee*, (1901) 2 Ch. 122.
(*l*) *Ex p. Llynvi, &c. Co.*, L. R. 7 Ch. 28. See *In re Hooley*, (1899) 2 Q. B. 579.
(*m*) But the trustee is not relieved from liability for wrongful acts: see *Schofield* v. *Hincks*, *ante*, p. 140.
(*n*) *Ex p. Walton*, 17 Ch. D. 746.
(*o*) See B. A. 1890, s. 13, *post*, p. 147.
(*p*) *Smalley* v. *Hardinge*, 7 Q. B. D. 524.

became bankrupt, and his trustee disclaimed, the lessee was held still liable under his covenant to the lessor for rent accrued due since the commencement of the bankruptcy (*q*).

But in a case of lessor, lessee, and surety for the rent, the effect of the disclaimer of the lease by the trustee of the bankrupt lessee being to put an end to the lease and accelerate the reversion, the surety ceases to be liable for rent subsequent to the disclaimer: if he remained liable, the bankrupt's property would not be relieved from liability, for the surety would have a right of proof (*r*).

If a lessee who has deposited a lease by way of equitable mortgage, becomes bankrupt, and the trustee, instead of disclaiming, assigns the lease to the mortgagee at his request, the mortgagee must indemnify him against the covenants contained in the lease (*s*).

The leasehold estates of a bankrupt vest in the trustee on his appointment, and the trustee has no right of election to accept or decline them, his proper remedy being by disclaimer; and if he neglects or is unable to disclaim, he becomes, by virtue of the privity of estate existing between him, as assignee, and the lessors, personally liable in respect of the covenants contained in the leases, as from the date of his appointment; but he is not liable for any breaches of covenants happening before his appointment (*t*). He may relieve himself from future liability by assigning the lease, even to a pauper, and that, too, though it contain a covenant not to assign without leave (*u*).

Under the late Act, as the disclaimer of a lease related back to the date of adjudication, the trustee of a bankrupt lessee, who disclaimed the lease, was not entitled, as against the lessor, to the tenant's fixtures, even though he removed them before the date of the disclaimer (*x*); but this is no longer so, as a disclaimer now operates as from its date. If the trustee disclaims, the landlord should either take the tenant's fixtures at a valuation, or give a reasonable time to the trustee to remove them before disclaiming (*y*).

(*q*) *Hill* v. *E. & W. India Dock Co.*, 9 App. Cas. 448.
(*r*) *Stacey* v. *Hill*, (1901) 1 Q. B. 660: so held by Court of Appeal.
(*s*) *Ex p. Buxton*, 15 Ch. D. 289.
(*t*) *Titterton* v. *Cooper*, 9 Q. B. D. 473.
(*u*) *Hopkinson* v. *Lovering*, 11 Q. B. D. 92; *In re Johnson and Stephens*, 1 Man. 59.
(*x*) *Ex p. Stephens*, 7 Ch. D. 127; *Ex p. Brook*, 10 Ch. D. 100.
(*y*) *In re Moser*, 13 Q. B. D. 738.

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Again, where, under the Act of 1869, a trustee disclaimed a lease which contained a proviso enabling the lessee, during or within twelve months from the expiration or sooner determination of the term, to remove machinery erected by him for trade purposes, it was held, that the disclaimer having operated as a surrender of the lease, with all its provisions, as from the date of adjudication, (or in liquidation by arrangement from the appointment of the trustee), the lessor was entitled to the machinery, and the trustee could not claim it against him (*z*). But it would seem that in such a case now the trustee could claim such machinery if he removed it before the disclaimer, as the disclaimer does not relate back to the adjudication (*a*).

Where, under the Act of 1869, a bankrupt was the lessee of lands, and personal chattels, demised to him as one subject-matter, at one entire rent, it was held, that a disclaimer of the lease by the trustee operated as a surrender of the chattels as well as of the land, and that the trustee could not claim the chattels under the reputed ownership clause (*b*). This seems to be still good law, though a disclaimer does not now relate back to the adjudication.

Where a trustee has obtained leave to disclaim a lease, the lessor, or an equitable mortgagee or other person, who wishes to appeal from the order giving leave to disclaim, for the purpose of having conditions imposed or otherwise, should apply for a stay of proceedings, as it will be too late to appeal when the trustee has executed the disclaimer (*c*).

Vesting orders.

Sub-s. 6 of s. 55, as has been seen, enables the Court to make an order vesting disclaimed property in the person entitled thereto or an order for its delivery to him (*d*). The order may be made on the application of a person who claims an interest in the disclaimed property, or who is under any liability not discharged by the Act in respect of it. Thus, if a lessee who has mortgaged leasehold property by subdemise becomes bankrupt, and the trustee obtains leave to disclaim, the mortgagee may obtain an order vesting the property in him subject to the same liabilities and

(*z*) *Ex p. Glegg, In re Latham*, 19 Ch. D. 7.
(*a*) See also *In re Moser, sup.*
(*b*) *Ex p. Allen*, 20 Ch. D. 341.
(*c*) *In re Woods, Ex p. Ditton*, 3 Ch. D. 459; *Ex p. Sadler, In re Hawes*, 19 Ch. D. 122.
(*d*) Cf., under the old Act, *In re Mercer and Moore*, 14 Ch. D. 287.

obligations as the bankrupt was subject to under the lease in respect of the property at the date of the petition (*e*). And, on the application of the lessor, an order may be made excluding the mortgagee from all interest in or security upon the property, unless within a certain time he elect to accept a vesting order subject to those liabilities and obligations (*e*). If the mortgagee should decline to accept a vesting order on such terms, the Court may order that the property be vested in or delivered to the lessor (*e*). In the case of *In re Finley*, just cited, a doubt was expressed whether when an order is made vesting the property in the mortgagee, he becomes liable to the covenants and obligations of the lease only as an assignee thereof, or to the same extent as if he were the original lessee. Now, however, by the B. A. 1890, s. 13, "The Court may, if it thinks fit, modify the terms prescribed by the proviso in sub-s. 6 of s. 55, so as to make the person in whose favour the vesting order may be made subject only to the same liabilities and obligations as if the lease had been assigned to him at the date when the bankruptcy petition was filed, and (if the case so requires) as if the lease had comprised only the property comprised in the vesting order." It would seem that a strong case must be made out to induce the Court to make this modification (*f*).

A mortgagee by sub-demise of leaseholds cannot evade sub-s. 6 by transferring the mortgage debt and security to a nominee of his own, a person of small means, who is to hold the same as trustee for the mortgagee, and who is willing to take a vesting order. If the mortgagee himself refuses to take a vesting order, he will, on the lessor's application, be excluded from all interest in and security upon the property (*g*).

Payment of Moneys into Bank.—As has been seen (*ante*, p. 129), s. 162 of the Act enacts that trustees and others having in their hands under the B. A. 1869, and other Acts now repealed, unclaimed or undistributed funds or dividends for a certain period after the same became

) *In re Cock*, 20 Q. B. D. 343; *In re Finley*, 21 Q. B. D. 475. In these cases the mortgagor, who had become bankrupt, was the lessee; but a similar order was made where the mortgagor bankrupt was an assignee of the lease: *In re Baker, Ex p. Lupton*, (1901) 2 K. B. 628.

(*f*) *In re Walker*, 2 Man. 60.

(*g*) *In re Smith, Ex p. Hepburn*, 25 Q. B. D. 536.

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claimable or distributable, are to dispose of them as directed by that section. Further, all moneys received by trustees in bankruptcy must be paid into the Bank of England, to the credit of the Bankruptcy Estates Account kept there by the Board of Trade (*h*), unless the Board, on the application of the committee of inspection, allow an account to be opened in a local bank. By ss. 74 and 75 :—

S. 74.

Trustee to pay moneys into Bankruptcy Estates Account.

When account may be kept at local bank.

"Every trustee in bankruptcy shall, in such manner and at such times as the Board of Trade with the concurrence of the Treasury direct, pay the money received by him to the Bankruptcy Estates Account at the Bank of England, and the Board of Trade shall furnish him with a certificate of receipt of the money so paid (*i*). Provided that if it appears to the committee of inspection that for the purpose of carrying on the debtor's business, or of obtaining advances, or because of the probable amount of the cash balance, or if the committee shall satisfy the Board of Trade that for any other reason it is for the advantage of the creditors that the trustee should have an account with a *local* bank, the Board of Trade shall, on the application of the committee of inspection, authorise the trustee to make his payments into and out of such local bank as the committee may select. Such account shall be opened and kept by the trustee in the name of the debtor's estate; and any interest receivable in respect of the account shall be part of the assets of the estate.

Name of account to be kept in local bank.

Payments into and out of local bank.

"The trustee shall make his payments into and out of such local bank in the prescribed manner (*k*).

Consequence of retaining moneys.

"If a trustee at any time retains for more than ten days a sum exceeding fifty pounds, or such other amount as the Board of Trade in any particular case authorise him to retain, then, unless he explains the retention to the satisfaction of the Board of Trade, he shall pay interest on the amount so retained in excess at the rate of twenty pounds per centum per annum, and shall have no claim for remuneration, and may be removed from his office by the Board of Trade, and shall be liable to pay any expenses occasioned by reason of his default (s. 74 (6)).

(*h*) S. 74 (1). The account of the Accountant in Bankruptcy is transferred to this account (s. 74 (2)).
(*i*) S. 74 (3).
(*k*) S. 74 (4) : see Rs. 312, 340, 341.

"All payments out of money standing to the credit of the Board of Trade in the Bankruptcy Estates Account shall be made by the Bank of England in the prescribed manner (s. 74 (7); see r. 341).

Payment out of money in Bankruptcy Estates Account.

"No trustee in a bankruptcy or under any composition or scheme of arrangement shall pay any sums received by him as trustee into his private banking account (s. 75).

S. 75. Trustee not to pay into private account.

"Subject to any general rules relating to small bankruptcies under Part VII. of this Act, where the debtor at the date of the receiving order has an account at a bank, such account shall not be withdrawn until the expiration of seven days from the day appointed for the first meeting of creditors, unless the Board of Trade, for the safety of the account, or other sufficient cause, order the withdrawal of the account" (s. 74 (5): see r. 273 (6)).

[*i.e.* ss. 121–2, p. 171.]

Books to be kept by Trustee.—The trustee shall keep in manner prescribed, proper books, in which he shall from time to time cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed (s. 80). These books are a *Record* book, in which he will enter resolutions, &c., at meetings, and a *Cash* book. If he carries on the business of the debtor he is to keep a *trading account* thereof (Rs. 285—289, 308).

Ss. 79, 80. Books to be kept by trustee,

Any creditor may, subject to the control of the Court, personally or by his agent inspect any such books, and on payment of the prescribed fees may obtain a copy of the trustee's accounts, as well as a list of the creditors and of the debts respectively due to them (ss. 79, 80; Rs. 314, 315).

open to inspection by creditors.

List of Creditors to be furnished by Trustee.—The trustee or official receiver shall, whenever required by any creditor so to do, furnish and transmit to such creditor by post a list of the creditors, showing in such list the amount of the debt due to each of such creditors. The trustee or official receiver shall be entitled to charge for such list the sum of threepence per folio of seventy-two words, together with the cost of the postage thereof (B. A. 1890, s. 16).

Trustee to furnish list of creditors.

Accounts to be furnished by Trustee.—It shall be lawful for any creditor, with the concurrence of one-sixth of the creditors (including himself), at any time to call upon the trustee or official receiver to furnish and transmit to the

Statement of accounts.

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creditors a statement of the accounts up to the date of such notice, and the trustee shall, upon receipt of such notice, furnish and transmit such statement of the accounts: provided that the person at whose instance the accounts are furnished shall deposit with the trustee or official receiver, as the case may be, a sum sufficient to pay the costs of furnishing and transmitting the accounts, such sum to be repaid to him out of the estate if the creditors or the Court so direct (B. A. 1890, s. 17; R. 315).

Audit of trustee's accounts, by committee.

Audit of Trustee's Accounts.—The trustee is to submit his books and accounts and vouchers to the *committee of inspection* (if any) at least once in three months, and the committee at least once in the same period are to audit the cash-book (Rs. 287, 288). But besides this there is to be an audit by the *Board of Trade*, it being provided that:—

S. 78.

Audit of trustee's accounts, by Board of Trade.

Every trustee shall, at such times as may be prescribed, but not less than *twice* in each year during his tenure of office, send to the Board of Trade, or as they direct, an account of his receipts and payments as such trustee.

The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form. The Board of Trade shall cause the accounts so sent to be audited, and for the purposes of the audit the trustee shall furnish the Board with such vouchers and information as the Board may require, and the Board may at any time require the production of and inspect any books or accounts kept by the trustee.

Filing and inspection of audited accounts.

When any such account has been audited one copy thereof shall be filed and kept by the Board, and the other copy shall be filed with the Court, and each copy shall be open to the inspection of any creditor, or of the bankrupt, or of any person interested (s. 78; Rs. 289—291).

S. 81.

Annual statement of proceedings.

Annual Statement to the Board of Trade.—Every trustee in a bankruptcy must from time to time, as may be prescribed, and at least *once in every year* during the continuance of the bankruptcy, transmit to the Board of Trade a statement showing the proceedings in the bankruptcy up to the date of the statement, containing the prescribed particulars, and made out in the prescribed form.

The Board must cause the statements so transmitted to be examined, and call the trustee to account for any mis-

feasance, neglect, or omission which may appear on the said statements or in his accounts or otherwise, and may require the trustee to make good any loss which the estate of the bankrupt may have sustained by the misfeasance, neglect, or omission (s. 81).

Ordinary powers of Trustee to deal with Bankrupt's Property.—As to these it is enacted by s. 56, that,—

S. 56. Powers of trustee to deal with property.

"Subject to the provisions of this Act, the trustee may do all or any of the following things:—

(1) "Sell all or any part of the property of the bankrupt (including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt), by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels (*l*).

(2) "Give receipts for any money received by him, which receipts shall effectually discharge the person paying the money from all responsibility in respect of the application thereof:

(3) "Prove, rank, claim, and draw a dividend in respect of any debt due to the bankrupt:

(4) "Exercise any powers the capacity to exercise which is vested in the trustee under this Act, and execute any powers of attorney, deeds, and other instruments for the purpose of carrying into effect the provisions of this Act:

(5) "Deal with any property to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with it; and ss. 56 to 73 of 3 & 4 Will. 4, c. 74, 'for the abolition of fines and recoveries, &c.,' shall extend and apply to proceedings under this Act, as if those sections were here re-enacted and made applicable in terms to those proceedings."

S. 57. Powers exercisable by trustee with permission of committee of inspection.

Powers exercisable with the permission of the Committee of Inspection.—"The trustee may, with the *permission of the committee of inspection*, do all or any of the following things:—

(1) "Carry on the business of the bankrupt, so far as

(*l*) See p. 135, Neither the trustee nor any member of the committee can buy any of the property without the leave of the Court: R. 316. In *Luddy's Trustee* v. *Peard*, 33 Ch. D. 500, a sale to the bankrupt's solicitor was set aside. See and cf. *In re Gallard*, (1897) 2 Q. B. 8.

may be necessary for the beneficial winding-up of the same (*m*).

(2) "Bring, institute, or defend any action or other legal proceeding relating to the property of the bankrupt (*n*).

(3) "Employ a solicitor or other agent to take any proceedings or do any business which may be sanctioned by the committee of inspection (*o*):

(4) "Accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future time subject to such stipulations as to security or otherwise as the committee think fit:

(5) "Mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts:

(6) "Refer any dispute to arbitration, compromise all debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt, on the receipt of such sums, payable at such times, and generally on such terms as may be agreed on:

(7) "Make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of any debts provable under the bankruptcy:

(8) "Make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the bankrupt, made or capable of being made on the trustee by any person or by the trustee on any person: [see, *e.g.*, *In re Perkins*, (1898) 2 Ch. 182].

(9) "Divide in its existing form amongst the creditors,

(*m*) See R. 316A.

(*n*) The trustee, though insolvent, need not give security for costs: *Cowell* v. *Taylor*, 31 Ch. D. 34.

(*o*) When the official receiver is trustee he is bound by this sub-s.: *In re Duncan*, (1892) 1 Q. B. 331. As to the time when the permission ought to be obtained, see B. A. 1890, s. 15 (3), *ante*, p. 139. The amount of costs to be incurred may be limited: *In re Duncan*, (1892) 1 Q. B. 879. The permission need not, it seems, be in writing, but it must be specific: *In re Vavasour*, (1900) 2 Q. B. 309.

according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

Permission not to be general.

"The permission given for the purposes of this section shall not be a general permission to do all or any of the above-mentioned things, but shall only be a permission to do the particular thing or things for which permission is sought in the specified case or cases" (s. 57).

S. 64.

Power to allow bankrupt to manage property.

Again, the trustee, with the *permission of the committee of inspection*, may appoint the bankrupt himself to superintend the management of the property of the bankrupt or of any part thereof, or to carry on the trade (if any) of the bankrupt for the benefit of his creditors, and in other respects to aid in administering the property in such manner and on such terms as the trustee may direct.

Allowance to bankrupt for maintenance or service.

The trustee may from time to time, with the *permission of the committee of inspection*, make such allowance as he may think just to the bankrupt out of his property for the support of the bankrupt and his family, or in consideration of his services if he is engaged in winding up his estate, but any such allowance may be reduced by the Court (*p*).

Local bank.

The committee may authorise any opening of an account at a local bank (*ante*, p. 148), and where there is no committee the Board of Trade may direct or permit acts to be done by the trustee (*ante*, p. 63). The functions of the committee so devolving on the Board may, subject to its directions, be exercised by the official receiver (*q*).

S. 89.

Discretionary powers of trustee and control thereof.

Control over Trustee.—Subject to the provisions of the Act, the trustee shall, in the administration of the property of the bankrupt and in the distribution thereof amongst his creditors, have regard to any directions that may be given by resolution of the creditors at any general meeting, or by the committee, and any directions so given by the creditors at any general meeting shall in case of conflict be deemed to override any directions given by the committee (*r*).

Meetings to ascertain wishes of creditors.

The trustee may from time to time summon general meetings of the creditors so as to ascertain their wishes, and it shall be his duty to summon meetings at such

(*p*) S. 64 : see Rs. 296, 325.
(*q*) S. 22 (9) : R. 337.
(*r*) See *In re Ridgway*, 6 Mor. 277. A trustee should not, though directed by the committee, *unreasonably* reject a proof : *Ex p. Brown*, 17 Q. B. D. 488.

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times as the creditors, by resolution, either at the meeting appointing the trustee or otherwise may direct, or whenever requested in writing to do so by one-fourth in value of the creditors.

Application to Court for directions.

The trustee may apply to the Court in manner prescribed for directions in relation to any particular matter arising under the bankruptcy (s. 89; R. 313).

Subject to the provisions of the Act the trustee shall use his own discretion in the management of the estate and its distribution among the creditors (s. 89). If he declines to launch a motion to assert his rights, a creditor, on giving an indemnity, may be allowed to do so in the trustee's name (*s*).

S. 90.

Appeal to Court against trustee.

If the bankrupt or any of the creditors, or any other person is aggrieved by any act or decision of the trustee, he may apply to the Court, and the Court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just (s. 90).

S. 91.

Control of Board of Trade over trustees.

The Board of Trade shall take cognizance of the conduct of trustees, and in the event of any trustee not faithfully performing his duties, and duly observing all the requirements imposed upon him by statute, rules or otherwise, with respect to the performance of his duties or in the event of any complaint being made to the Board by any creditor in regard thereto, the Board shall inquire into the matter and take such action thereon as may be deemed expedient.

The Board may at any time require any trustee to answer any inquiry made by it in relation to any bankruptcy in which the trustee is engaged, and may, if the Board think fit, apply to the Court to examine on oath the trustee or any other person concerning the bankruptcy.

The Board may also direct a local investigation to be made of the books and vouchers of the trustee (s. 91: R. 319).

Release of trustee. S. 82.

Release of Trustee.—As to this s. 82 enacts:—

(1) "When the trustee has realised all the property of the bankrupt, or so much thereof as can, in his opinion, be realised without needlessly protracting the trusteeship, and distributed a final dividend, if any, or has ceased to act

(*s*) *Ex p. Kearsley, In re Genese*, 17 Q. B. D. 1.

by reason of a composition having been approved, or has resigned, or has been removed from his office, the Board of Trade shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Board, shall take into consideration the report, and any objection which may be urged by any creditor or person interested against the release of the trustee, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the High Court.

(2) "Where the release of a trustee is withheld the Court may, on the application of any creditor or person interested, make such order as it thinks just, charging the trustee with the consequences of any act or default he may have done or made contrary to his duty.

(3) "An order of the Board releasing the trustee shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the bankrupt, or otherwise in relation to his conduct as trustee, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact (*t*).

(4) "Where the trustee has not previously resigned or been removed, his release shall operate as a removal of him from his office, and thereupon the official receiver shall be the trustee" (*u*).

The above section, with the exception of sub-s. 4, applies to an official receiver or official assignee when he is or is acting as trustee, and where an official receiver or official assignee has been released under that section he is to continue to act as trustee for any subsequent purposes of the administration of the debtor's estate, but no liability is to attach to him personally by reason of his so continuing in respect of any act done, default made, or liability incurred before his release (*x*).

(*t*) The suppression or concealment must have in it an element of fraud: *In re Harris, Ex p. Hasluck*, (1899) 2 Q. B. 97.

(*u*) See Rs. 292, 309, 310A. The release has this effect even in a small bankruptcy under s. 121, *post*: see *In re Leach*, (1900) 2 Q. B. 649.

(*x*) Bankruptcy (Discharge and Closure) Act, 1887, s. 6, sub-s. 2.

CHAPTER IX.

OFFICIAL RECEIVERS AND BOARD OF TRADE.

OFFICIAL receivers are appointed by and act under the directions of the Board of Trade, which may at any time remove persons so appointed. Their number and the districts assigned to them are fixed by the Board with the concurrence of the Treasury, and, unless the Board with the like concurrence otherwise directs, one only is appointed for each district; but the same person may be appointed to act for more than one district (*a*). They are also officers of the Court to which they are attached, and where more than one is attached to the same Court, the one appointed by the Court for a particular estate is to be the official receiver for the purposes of that estate: the estates are distributed amongst them in the prescribed manner, but the Board may at any time require a particular estate to be assigned to a particular official receiver (*b*). The Board may nominate any of its officers to fulfil the duties of an official receiver during any temporary vacancy in the office or during his temporary absence or illness, and may nominate a deputy to act for an official receiver for a period not exceeding two months. It may also appoint assistant official receivers (*c*). It may also order, for special reasons, that any of its officers mentioned in the order, may discharge any portion of the duties of the official receiver, which it is expedient that some person other than the official receiver should perform, provided that no additional expense be thereby incurred (*d*).

Status of official receivers.

Deputy official receiver.

Duties of Official Receivers.—An official receiver may for the purpose of affidavits, verifying proofs, petitions, or

(*a*) S. 66: See also Rs. 321—339. As to official receivers acting *for* the Board of Trade, see R. 337.
(*b*) S. 66; Rs. 323A—323C.
(*c*) S. 67: cf. Rs. 321, 327—329.
(*d*) B. A. 1890, s. 14.

other proceedings under the Act, administer oaths. All expressions referring to the trustee under a bankruptcy shall, unless the context otherwise requires, or the Act otherwise provides, include the official receiver when acting as trustee (*e*).

Assistance from trustee.

The trustee must supply the official receiver with such information, and give him such access to, and facilities for inspecting the bankrupt's books and documents and generally must give him such aid, as may be requisite for enabling the official receiver to perform his duties under this Act (*f*).

Duties of official receiver as regards the debtor's conduct.

As regards the *debtor*, it is the official receiver's duty—

(1) To investigate the conduct of the debtor and to report to the Court, stating whether there is reason to believe that the debtor has committed any act which constitutes a misdemeanour under the Debtors Act, 1869, or any amendment thereof, or under the Bankruptcy Act, or which would justify the Court in refusing, suspending, or qualifying an order for his discharge. (2) To make such other reports concerning the conduct of the debtor as the Board of Trade may direct. (3) To take such part as may be directed by the Board in the public examination of the debtor. (4) To take such part, and give such assistance in relation to the prosecution of any fraudulent debtor as the Board may direct (*g*).

S. 70.

As to the *debtor's estate*, it is the official receiver's duty—

Duties of official receiver as to debtor's estate.

(1) Pending the appointment of a trustee, to act as interim receiver of the debtor's estate, and, where a special manager is not appointed, as manager (*h*). (2) To authorise the special manager to raise money or make advances for the purposes of the estate in any case where, in the interest of the creditors, it appears necessary so to do. (3) To summon and preside at the first meeting (*i*). (4) To issue forms of proxy for meetings (*k*). (5) To report to the creditors as to any proposal which the debtor may have made with respect to the mode of liquidating his affairs.

(*e*) See *Turquand* v. *Board of Trade*, 11 App. Cas. 286, *ante*, p. 135.
(*f*) S. 68. See also R. 17A.
(*g*) S. 69. See pp. 182—186.
(*h*) As to appointing him interim receiver before a receiving order is made, see s. 10, *ante*, p. 48, and Rs. 170—175.
(*i*) See Sch. I.
(*k*) See Sch. I., and Rs. 245—248 ; B. A. 1890, s. 22, *post*, p. 197.

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(6) To advertise the receiving order, the date of the first meeting and of the public examination, and such other matters as it may be necessary to advertise. (7) To act as trustee during any vacancy in the office of trustee (cf. *ante*, p. 62).

For the purposes of his duties as interim receiver or manager the official receiver has the same powers as if he were a receiver and manager appointed by the High Court, but must, as far as practicable, consult the wishes of the creditors with respect to the management of the debtor's property, and may for that purpose, if he thinks it advisable, summon meetings of the persons claiming to be creditors, and must not, unless the Board of Trade otherwise orders, incur any expense beyond such as is requisite for the protection of the debtor's property or the disposing of perishable goods: provided that where the debtor cannot himself prepare a proper statement of affairs the official receiver may, subject to any prescribed rules (*l*), and at the expense of the estate, employ some person or persons to assist in the preparation of the statement of affairs.

Every official receiver must account to the Board of Trade and pay over all monies and deal with all securities in such manner as the Board from time to time direct (*m*).

Additional official receivers and other officers may, with the Treasury's approval, be appointed by the Board (*n*).

Transitory Provisions.—These direct the transfer to the Board of Trade of the comptroller in bankruptcy and other officials, regulate the status, new duties and superannuation of various persons, and appoint certain officers to be nominated by the Board to be trustees in liquidations by arrangement or bankruptcies under the Act of 1869, where a vacancy occurs in the office of trustee, or the registrar is trustee, or where after the close of a liquidation or a bankruptcy there is any property unrealised or undistributed (ss. 153—161).

Fees, Funds, Salaries, Expenditure, and Returns.—The Board of Trade, with the concurrence of the Treasury, fixes the remuneration of official receivers and others appointed by the Board. Such officers are paid out of

(*l*) See Rs. 125, 217, 263, 324, 326, 338.
(*m*) S. 70. See also Rs. 285, 286, 336.
(*n*) S. 71.

public moneys, and the receipts from various fees, stamps, and percentages which are regulated by the Lord Chancellor and the Treasury. Judicial salaries are regulated by the Lord Chancellor with the concurrence of the Treasury (*o*). The accounts of the Board are audited, and from its returns the Treasury prepares and lays annually before Parliament an account of receipts and expenditure in bankruptcy proceedings (*p*). All bankruptcy officers make returns, from which the Board prepares books for public information and researches, and the Board makes an annual report to Parliament on all judicial and financial matters (*q*). By the B. A. 1890, s. 25, this report now includes proceedings under the Deeds of Arrangement Act, 1887; and, for the purposes of such report, the registrar of bills of sale must make returns to the Board of Trade of the registration of deeds of arrangement; and every trustee under such a deed must, within thirty days of the 1st of January in each year, transmit to the Board, or as it directs, an account of his receipts and payments. If any trustee fails to transmit such account (*r*), the bankruptcy judge of the High Court may, on the application of the Board, for the purpose of enforcing such account, exercise the powers given by s. 102, sub-s. 5, in cases of bankruptcy (*ante*, p. 8). A trustee in the above section includes any person appointed to distribute a composition or to act in any fiduciary capacity under any deed of arrangement. The accounts so transmitted to the Board are open to inspection by any creditor on payment of the prescribed fee (*s*). The Board must make payments out of funds in its hands to any person entitled in accordance with the direction of the Court (*t*) and keep an account, called the Bankruptcy Estates Account, with the Bank of England (*u*), and where there is a surplus fund the investment of such fund and the dividends from such investment are to be under the control of the Treasury, which is to repay to the Board any sum that may be required in respect of bankrupts' estates (*x*).

Returns of receipts and expenditure under 50 & 51 Vict. c. 57.

(*o*) Ss. 77, 128, 129.
(*p*) S. 130.
(*q*) S. 131; Rs. 282—284.
(*r*) Though there are no assets: *In re Hertage*, 3 Man. 297.
(*s*) See B. A. 1890, s. 25; Deeds of Arrangement Rules, 1890, *post*.
(*t*) S. 101.
(*u*) S. 74.
(*x*) S. 76.

CHAPTER X.

PARTNERS AND JOINT DEBTORS.

CHAP. X.

In addition to the points incidentally mentioned elsewhere we shall collect here a few of the authorities and of the provisions of the Act relating to partners and joint debtors.

Subject to any agreement between the partners, every partnership is dissolved as regards all the partners by the bankruptcy of one (*a*).

S. 113.
Actions by trustee and bankrupt's partners.

Where a member of a partnership is adjudged bankrupt, the Court may authorise the trustee to commence and prosecute any action in the names of the trustee and of the bankrupt's partner; and any release by such partner of the debt or demand to which the action relates shall be void; but notice of the application for authority to commence the action must be given to him, and he may show cause against it, and the Court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the action, and if he does not claim any benefit therefrom he must be indemnified against costs in respect thereof as the Court directs (*b*).

S. 114.
Actions on joint contracts.

Where a bankrupt is a contractor in respect of any contract jointly with any person or persons, such person or persons may sue or be sued in respect of the contract without the joinder of the bankrupt (*c*).

S. 112.
Property of partners to be vested in same trustee.

Where a receiving order has been made on a bankruptcy petition against or by one member of a partnership, any other petition against or by a member of the same partnership must be filed in or transferred to the Court in which the first-mentioned petition is in course of prosecution, and, unless the Court otherwise directs, the same trustee or

(*a*) Partnership Act, 1890, s. 33.
(*b*) S. 113.
(*c*) S. 114.

receiver must be appointed as may have been appointed in respect of the property of the first-mentioned member of the partnership, and the Court may give directions for consolidating the proceedings (*d*).

S. 40 (3).

Joint and separate creditors cannot prove in competition with each other.

"In the case of partners the joint estate shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts. If there is a surplus of the separate estates it shall be dealt with as part of the joint estate. If there is a surplus of the joint estate it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate" (*e*).

Exceptions.

To this rule, however, there are some exceptions:—

(1) Joint creditors may receive dividends out of separate estates *pari passu* with separate creditors if there is no joint estate and if there is no solvent partner (*f*).

(2) Where a joint creditor is the petitioning creditor in a separate adjudication he may receive dividends out of the separate estate (*g*).

(3) Where an individual partner fraudulently as to his co-partners withdraws funds from the partnership and applies them to his own use, the creditors of the firm are entitled to prove against the separate estate in competition with the separate creditors; and so if funds belonging to the individual partners have been fraudulently converted to the use of the partnership, the separate estates may prove against the joint estate in competition with the joint creditors (*h*).

(4) Where one or more members of a firm carry on a distinct and separate trade, proof by the firm is allowed against the estate of the member or members carrying on such distinct trade or *vice versâ*, provided the debts have arisen in the ordinary course of business between trade and trade (*i*).

(*d*) S. 112. See Rs. 18, 19, 259—264.
(*e*) S. 40 (3). See Rs. 128, 265—270, 293; *Ex p. Cook*, 2 P. W. 500.
(*f*) *In re Carpenter*, 7 Mor. 270; *In re Budgett*, (1894) 2 Ch. 557.
(*g*) *Ex p. Hall*, 9 Ves. 349; *Ex p. Ackerman*, 14 Ves. 604.
(*h*) *Ex p. Sillitoe*, 1 Gl. & J. p. 382; *Read* v. *Bailey*, 3 App. Cas. 94.
(*i*) *Ex p. Maude*, L. R. 2 Ch. 550; *Ex p. Sillitoe*, *ubi sup.*

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If a receiving order is made against one partner, any creditor to whom that partner is indebted jointly with the other partners of the firm, or any of them, may prove his debt for the purpose of voting at any meeting of creditors, and may vote thereat; but he cannot receive a dividend out of the separate estate until all the separate creditors have received the full amount of their respective debts (Sch. I., r. 13).

Power to present petition against one partner.

As to bankruptcy petitions, by s. 110—any creditor whose debt is sufficient to entitle him to present a petition against all the partners of a firm may present a petition against any one or more partners of the firm without including the others: and by s. 111—where there are more respondents than one to a petition the Court may dismiss the petition as to one or more of them, without prejudice to the effect of the petition as against the other or others of them.

Power to dismiss petition against some respondents only.

We have eleswhere shown (*ante*, p. 119) how the Partnership Act, 1890 (53 & 54 Vict. c. 39), affects the priority of provable debts, and how a discharge in bankruptcy or the acceptance of a composition or scheme of arrangement may leave a joint debtor or partner liable (*ante*, p. 59; *post*, p. 169), and that in certain cases the public examination of one of joint debtors may be dispensed with (*ante*, p. 53).

S. 148.

It may be mentioned that for all or any of the purposes of the Act, a firm may act by any of its members (s. 148); and, as to proceedings in the name of the firm, it is provided

S. 115. Proceedings in partnership name.

that any two or more persons, *being partners*, or any person carrying on business under a partnership name, may take proceedings or be proceeded against under this Act in the name of the firm, but in such case the Court may, on application by any person interested, order the names of the persons who are partners in such firm or the name of such person to be disclosed in such manner, and verified on oath, or otherwise as the Court may direct (*k*).

(*k*) S. 115. See further Rs. 246, 259—270. *Semble*, "being partners" means "who have carried on business in partnership for the purpose of the liability which is sought to be enforced," and not necessarily present partners: *In re Wenham*, (1900) 2 Q. B. 698.

CHAPTER XI.

DISCHARGE OF THE BANKRUPT.

Discharge of Bankrupt.—Before an application by a bankrupt for an order of discharge can be heard the official receiver must make a report on the bankrupt's conduct and affairs, including his conduct under the bankruptcy proceedings (*a*), and the public examination must be concluded. S. 8 of the B. A. 1890, which relates to this subject, renders it more difficult for a bankrupt to obtain his discharge than did the repealed s. 28 of the B. A. 1883. By s. 8 :—

Bankruptcy Act, 1890, s. 8.

Discharge of bankrupt.

(1) "A bankrupt may, at any time after being adjudged bankrupt, apply to the Court for an order of discharge, and the Court shall appoint a day for hearing the application, but the application shall not be heard until the public examination of the bankrupt is concluded. The application shall be heard in open Court.

(2) "On the hearing of the application the Court shall take into consideration a report of the official receiver as to the bankrupt's conduct and affairs (including a report as to the bankrupt's conduct during the proceedings under his bankruptcy) (*b*), and may either grant or refuse an absolute order of discharge, or suspend the operation of the order for a specified time, or grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the bankrupt, or with respect to his after-acquired property: provided that the Court *shall refuse* the discharge in all cases where the bankrupt has committed any misdemeanour under the Debtors Act, 1869 (*c*), or the principal Act (*d*), or any other misdemeanour connected

32 & 33 Vict. c. 62.

(*a*) As to misconduct, see *In re Jones*, 24 Q. B. D. 589 ; 25 Q. B. D. 285. A refusal by a bankrupt to submit to a medical examination for the purpose of enabling the trustee to insure his life was held, under the repealed section, not to amount to misconduct, and this decision is probably still good : *Board of Trade* v. *Block*, 13 App. Cas. 570 : cf. *In re Jones*, *sup.*

(*b*) See Rs. 236—239.

(*c*) See *post*, p. 183.

(*d*) See s. 31.

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"(i) refuse the discharge; or

"(ii) suspend the discharge for a period of not less than two years; or

"(iii) suspend the discharge until a dividend of not less than ten shillings in the pound has been paid to the creditors; or

"(iv) require the bankrupt as a condition of his discharge to consent to judgment being entered against him by the official receiver or trustee for any balance or part of any balance of the debts provable under the bankruptcy which is not satisfied at the date of the discharge, such balance or part of any balance of the debts to be paid out of the future earnings or after-acquired property of the bankrupt in such manner and subject to such conditions as the Court may direct (*f*); but execution shall not be issued on the judgment without leave of the Court, which leave may be given on proof that the bankrupt has since his discharge acquired property or income available towards payment of his debts (*g*).

"Provided, that if at any time after the expiration of *two years* from the date of any order made under this section the bankrupt shall satisfy the Court that there is no reasonable probability of his being in a position to comply with the terms of such order, the Court may modify the terms of the order, or of any substituted order, in such manner and upon such conditions as it may think fit (*h*).

(3) "The facts hereinbefore referred to are:—

"(*a*) That the bankrupt's assets are not of a value equal

(*e*) The words "connected with his bankruptcy" indicate offences *ejusdem generis* with those mentioned in the principal Act or the Debtors Act: *In re Hedley*, (1895) 1 Q. B. 923. As to "special reasons," see *In re Stevens*, (1898) 2 Q. B. 495.

(*f*) It was held under the repealed section that the condition requiring a bankrupt to consent to judgment being entered against him should not be imposed unless the bankrupt is in receipt of income more than sufficient for himself and family, or is likely to acquire property sufficient to satisfy the judgment: *Ex p. Arnaud*, 36 W. R. 836; *Ex p. Gould*, 7 Mor. 215. This rule will probably still be followed. As to drawing up order, see R. 37A.

(*g*) See Rs. 240, 243, 244.

(*h*) R. 244B.

to ten shillings in the pound on the amount of his unsecured liabilities, unless he satisfies the Court that the fact that the assets are not of a value equal to ten shillings in the pound on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible:

"(*b*) That the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by him, and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy (*i*):

"(*c*) That the bankrupt has continued to trade after knowing himself to be insolvent:

"(*d*) That the bankrupt has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall lie on him) of being able to pay it:

"(*e*) That the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities:

"(*f*) That the bankrupt has brought on, or contributed to, his bankruptcy by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business affairs:

"(*g*) That the bankrupt has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him:

"(*h*) That the bankrupt has within three months preceding the date of the receiving order incurred unjustifiable expense by bringing a frivolous or vexatious action:

"(*i*) That the bankrupt has within three months preceding the date of the receiving order, when unable to

(*i*) As to the seriousness of this offence, see *Ex p. Campbell*, 15 Q. B. D. 213; but the sub-section does not apply to an isolated transaction not connected with the bankrupt's ordinary business: *In re Mutton*, 19 Q. B. D. 102; *In re Griffin*, 8 Mor. 1. The books should be so kept as to show at once the bankrupt's financial position: *Ex p. Reed and Bowen*, 17 Q. B. D. 244.

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pay his debts as they became due, given an undue preference to any of his creditors (*k*) :

" (*j*) That the bankrupt has within three months preceding the date of the receiving order incurred liabilities with a view of making his assets equal to ten shillings in the pound on the amount of his unsecured liabilities :

" (*k*) That the bankrupt has on any previous occasion been adjudged bankrupt, or made a composition or arrangement with his creditors :

" (*l*) That the bankrupt has been guilty of any fraud or fraudulent breach of trust (*l*).

(4) " For the purposes of this section, a bankrupt's assets shall be deemed of a value equal to ten shillings in the pound on the amount of his unsecured liabilities when the Court is satisfied that the property of the bankrupt has realised, or is likely to realise, or with due care in realisation might have realised, an amount equal to ten shillings in the pound on his unsecured liabilities, and a report by the official receiver or the trustee shall be *primâ facie* evidence of the amount of such liabilities.

(5) " For the purposes of this section, the report of the official receiver shall be *primâ facie* evidence of the statements therein contained (*m*).

Application for discharge.

(6) " Notice of the appointment by the Court of the day for hearing the application for discharge shall be published in the prescribed manner, and sent fourteen days at least before the day so appointed to each creditor who has proved, and the Court may hear the official receiver and the trustee, and may also hear any creditor (*n*). At the hearing the Court may put such questions to the debtor and receive such evidence as it may think fit.

(*k*) *Undue* preference has a wider meaning than *fraudulent* preference referred to in s. 48 (p. 86), and may apply to a transaction which could not be set aside under that section : *In re Skegg*, 25 Q. B. D. 285. It is an undue preference where an insolvent debtor on the eve of his bankruptcy pays a creditor in full, though that creditor would probably in the bankruptcy administration get a similar preference : *In re Bryant*, (1895) 1 Q. B. 420.

(*l*) Paragraphs (*a*), (*e*), part of (*f*), (*h*), and (*j*) were not in repealed s. 28.

(*m*) The bankrupt must give notice of his intention to dispute any statements in the report : R. 238A.

(*n*) See Rs. 235—244B. A creditor must give notice of his intention to oppose on grounds other than those mentioned in the O.R.'s report : R. 238A.

(7) "The powers of suspending and of attaching conditions to a bankrupt's discharge may be exercised concurrently (*o*).

(8) "A discharged bankrupt shall, notwithstanding his discharge, give such assistance as the trustee may require in the realisation and distribution of such of his property as is vested in the trustee, and if he fails to do so he shall be guilty of a contempt of Court; and the Court may also, if it thinks fit, revoke his discharge, but without prejudice to the validity of any sale, disposition, or payment duly made or thing duly done subsequent to the discharge but before its revocation."

Again, the bankrupt's order of discharge may be refused or suspended, or granted only subject to conditions, if he has executed a settlement, or made a covenant or contract, of the kind mentioned in s. 29, which is as follows:—

S. 29. Fraudulent settlements.

"In either of the following cases; that is to say,

(1) "In the case of a settlement made before and in consideration of marriage where the settlor is not at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement; or

(2) "In the case of any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest (not being money or property of or in right of his wife);

"If the settlor is adjudged bankrupt or compounds or arranges with his creditors, and it appears to the Court that such settlement, covenant, or contract was made in order to defeat or delay creditors, or was unjustifiable having regard to the state of the settlor's affairs at the time when it was made, the Court *may* refuse or suspend an order of discharge, or grant an order subject to conditions, or refuse to approve a composition or arrangement, as the case may be, in like manner as in cases where the debtor has been guilty of fraud."

Analysing the above two sections we find:—

(*a*) Generally the Court *may either grant or refuse* an absolute order of discharge, or suspend the

(*o*) This could not be done formerly: *In re Huggins*, 22 Q. B. D. 277.

operation of the order for a limited time, or grant it subject to conditions, with or without a suspension:

(*b*) The Court *shall refuse* it, except for *special reasons*, when the bankrupt has committed a misdemeanour under the Bankruptcy Act or the Debtors Act, or any misdemeanour or felony connected with his bankruptcy:

(*c*) On proof of certain facts the Court *shall either* refuse the order *or* suspend it for a period of not less than two years, or until a dividend of not less than ten shillings in the pound has been paid to the creditors, or require the bankrupt, as a condition of his discharge, to consent to judgment being entered up against him for any balance or part of any balance of the debts provable under the bankruptcy; but an order to the effect lastly here mentioned may under certain circumstances be modified after two years:

(*d*) Where the bankrupt has made a fraudulent or unjustifiable marriage settlement, the Court *may* refuse or suspend the order or grant it subject to conditions.

It will not be forgotten that the provisions of these sections are equally important, where the approval of the Court is sought for a composition or scheme (*ante*, p. 57).

In considering an application for an order of discharge or for the approval of a composition or scheme of arrangement under s. 3 of B. A. 1890 (*ante*, p. 56), the Court will have regard to the interests of public morality, and not merely to those of the debtor or his creditors (*p*).

S. 30. Effect of order of discharge.

Effect of Order of Discharge.—By s. 30 (1), "An order of discharge shall not release the bankrupt from any debt on a recognizance, nor from any debt with which the bankrupt may be chargeable at the suit of the Crown, or of any person for any offence against a statute relating to any branch of the public revenue, or at the suit of the sheriff or other public officer on a bail bond entered into for the appearance of any person prosecuted for any such offence: and he shall not be discharged from such excepted debts unless the Treasury certify in writing their consent to his

(*p*) *In re Badcock*, 3 Mor. 138; *Ex p. Campbell*, 15 Q. B. D. 213: cf. *Ex p. Kearsley*, 18 Q. B. D. 168.

being discharged therefrom. An order of discharge shall not release the bankrupt from any debt or liability incurred by means of any fraud or *fraudulent* breach of trust *to which he was a party*, nor from any debt or liability whereof he has obtained forbearance by any fraud *to which he was a party* (*q*).

(2) "An order of discharge shall release the bankrupt from all other debts provable in bankruptcy [*see below*].

(3) "An order of discharge shall be conclusive evidence of the bankruptcy, and of the validity of the proceedings therein, and in any proceedings that may be instituted against a bankrupt who has obtained an order of discharge in respect of any debt from which he is released by the order, the bankrupt may plead that the cause of action occurred before his discharge, and may give this Act and the special matter in evidence.

Persons not released by bankrupt's order of discharge.

(4) "An order of discharge shall not release any person who at the date of the receiving order was a partner or co-trustee with the bankrupt, or was jointly bound or had made any joint contract with him, or any person who was surety or in the nature of a surety for him."

Discharge may not release bankrupt from certain debts.

Sub-s. 2 of the above section is now modified by s. 10 of the B. A. 1890, which enacts that "an order of discharge shall not release a bankrupt from any liability under a judgment against him in an action for seduction, or under an affiliation order, or under a judgment against him as a co-respondent in a matrimonial cause, except to such an extent and under such conditions as the Court expressly orders in respect of such liability." The like provision applies to a composition or scheme of arrangement (*r*).

It has already been stated that the persons mentioned in sub-s. 4 are not released by the creditors accepting from the debtor a composition or scheme of arrangement (*ante*, p. 57).

Under B. A. 1869, discharge in bankruptcy or liquidation by arrangement was a good

Under the late Act it was held that an order or certificate of discharge was a good defence to an action for a debt provable in a bankruptcy or liquidation, though the debtor made a subsequent promise to the creditor to pay the debt from which he was so discharged (*s*): and though the creditor

(*q*) The words in italics were not in the B. A. 1869, and will apply to a case where one partner is innocent of a fraud or fraudulent breach of trust committed by his co-partner: see *Cooper* v. *Prichard*, 11 Q. B. D. 351 (under B. A. 1869).

(*r*) Cf. B. A. 1890, s. 3 (12), *ante*, p. 57.

(*s*) *Heather* v. *Webb*, 2 C. P. D. 1.

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defence to action for a provable debt, but not where there was an agreement to pay it for fresh consideration.

Such an agreement invalid, when made by compounding debtor, whose composition was unpaid.

knew nothing of the bankruptcy or liquidation proceedings (*t*). But a promise by the debtor, for a fresh consideration, to pay a debt from which he was so discharged was binding on him (*u*). An agreement, however, made by a compounding debtor with one of his creditors, whilst the composition was unpaid, to pay him his debt in full, was not considered valid, even though there were a fresh consideration, and was in fact held inconsistent with good faith to the other creditors (*x*). It is submitted that these decisions are still binding under the present Acts.

Effect of order of discharge when set up in other countries.

As a general rule a discharge by the laws of any country of a debt or liability arising in that country (if it extinguishes the debt or liability and does not merely interfere with the remedies or course of procedure to enforce it), will be an effectual answer to a claim therefor, not only in the Courts of that country, but everywhere else. This is a principle of international law recognised by the comity of nations (*y*). But a discharge of a debt or liability by the law of a country other than that in which the debt arises does not *per se* relieve the debtor in any other country (*y*). Lastly, an English order of discharge is a bar in an English Court to all debts wherever contracted; for, as all the bankrupt's property, abroad as well as here, passes from him and vests in his trustee, it would be unjust afterwards to allow a foreign creditor to sue him in this country (*y*).

After-acquired property.

Property Acquired by Bankrupt after Bankruptcy but before Discharge.—It should be remembered that property which a bankrupt has at the commencement of his bankruptcy vests absolutely in the trustee; but property acquired by a bankrupt after the bankruptcy and before his discharge belongs to him until the trustee *intervenes;* and until such intervention, all transactions with a bankrupt after his bankruptcy with any person dealing with him *bonâ fide* and for value, in respect of his after-acquired property, whether with or without knowledge of the bankruptcy, are valid against the trustee (*z*). This decision, however, though it

(*t*) *Elmslie* v. *Corrie*, 4 Q. B. D. 295.
(*u*) *Jakeman* v. *Cook*, 4 Ex. D. 26.
(*x*) *Ex p. Barrow*, 18 Ch. D. 464.
(*y*) *Ellis* v. *M'Henry*, L. R. 6 C. P. 228.
(*z*) *Cohen* v. *Mitchell*, 25 Q. B. D. 262. This is so even though a *bonâ fide* assignee may not have got actual possession of property assigned to him: *Hunt* v. *Fripp*, (1898) 1 Ch. 675.

applies to leaseholds (*a*), does not apply in the case of real estate, and an undischarged bankrupt cannot, even before the trustee's intervention, convey after-acquired real estate to a *bonâ fide* purchaser for value, so as to give a good title to him against the trustee (*b*). Where an undischarged bankrupt assigns an equitable chose in action, but the trustee gives notice of his claim to it before the assignee, such notice is a good *intervention* (*c*).

Twice Bankrupt and no Discharge.—The uncertainty which existed as to the respective rights of the two trustees in a case of this kind has been cleared up by the Court of Appeal in a case which has been already cited (*d*).

S. 31. Undischarged bankrupt obtaining credit to extent of £20, may in certain cases be punished as for misdemeanour.

Undischarged Bankrupt.—It is important for bankrupts to endeavour to obtain their discharges, as s. 31 enacts, that "Where an undischarged bankrupt who has been adjudged bankrupt under this Act obtains credit to the extent of twenty pounds or upwards from any person without informing such person that he is an undischarged bankrupt, he shall be guilty of a misdemeanour, and may be dealt with and punished as if he had been guilty of a misdemeanour under the Debtors Act, 1869, and the provisions of that Act shall apply to proceedings under this section." To convict a bankrupt under this section there need not be an agreement to give him credit, if credit has in fact been obtained (*e*); nor is it necessary to prove that there was an intent to defraud (*f*). The offence was committed where goods exceeding £20 in value were obtained, though the order was for less (*g*).

(*a*) *In re Clayton and Barkley's Contract*, (1895) 2 Ch. 212.
(*b*) *In re New Land Development Association*, (1892) 2 Ch. 138, *ante*, p. 78.
(*c*) *Mercer* v. *Vans Colina*, 4 Man. 363 : *In re Beall*, (1899), 1 Q. B. 688 ; cf. *In re Wallis*, (1902) 1 K. B. 719.
(*d*) *In re Clark, Ex p. Beardmore*, (1894) 2 Q. B. 393 ; *ante*, p. 79.
(*e*) *Reg.* v. *Peters*, 16 Q. B. D. 636.
(*f*) *Reg.* v. *Dyson*, (1894) 2 Q. B. 176.
(*g*) *Reg.* v. *Juby*, 55 L. T. 788.

CHAPTER XII.

SMALL BANKRUPTCIES: COMMITTAL OF JUDGMENT DEBTORS: DECEASED INSOLVENT DEBTORS.

(A.) SUMMARY ADMINISTRATION WHERE DEBTOR'S PROPERTY NOT LIKELY TO EXCEED £300.

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S. 121.

By s. 121, the estate of a debtor whose property is not likely to exceed £300 may be ordered to be wound up by a new and special procedure.

Petition.—As in the case of ordinary bankruptcies a petition by or against a debtor is the first step.

Application for order.

The official receiver or his deputy must as soon as he has received notice of his appointment hold a *personal interview* with the debtor in order to determine whether the estate shall be administered under s. 121 (R. 324). He may then apply for an order for summary administration (R. 272).

Order for summary administration.

The Court will make such order if it is satisfied by affidavit or the official receiver's report that the property of the debtor is not likely to exceed £300 (s. 121) (*a*).

Proceedings after Order.—After the making of the order the provisions of the Act and Rules will, subject to certain modifications, apply, but those relating to the *examination* and *discharge* of the debtor are in no way modified.

The principal modifications are the following:—

(1) If the debtor is adjudged bankrupt the official receiver is the trustee, but the creditors may by special resolution resolve that some other person than the official receiver may be appointed trustee, whereupon the bankruptcy proceeds as if the order had not been made (s. 121) (*b*).

(*a*) This order, coupled with an order of adjudication, is not a "conveyance" to the official receiver within the Middlesex Registration Act, so that his title (unregistered) will not be postponed to that of a subsequent mortgagee from the bankrupt whose mortgage is duly registered: *In re Calcott and Elvin's Contract*, (1898) 2 Ch. 460.

(*b*) After the release of a trustee the creditors cannot appoint another: *In re Leach*, (1900) 2 Q. B. 649.

(2) There is no committee of inspection, but the official receiver may do with the permission of the Board of Trade all that a trustee may do with the permission of the committee of inspection (s. 121).

(3) The scale of solicitor's costs is lower, and is fixed by R. 112 (2), and No. 1 of the Scale of Costs.

(4) There is no advertisement in a local paper unless the Board of Trade otherwise directs (R. 273 (1)).

(5) All questions are determined by the Court without a jury (R. 273 (3)).

(6) If no proposal for a composition or scheme is lodged with the official receiver within the time specified in s. 3 of the B. A. 1890, or such time thereafter as the official receiver may fix, or if the official receiver satisfies the Court that the debtor has absconded, or that he does not intend to propose a composition or scheme or that he proposes one not reasonable or calculated to benefit the creditors, the Court may adjudge the debtor bankrupt. A report by the official receiver under this paragraph is *primâ facie* evidence of the facts stated therein (R. 273 (4)).

(7) If during or at the end of the public examination the Court thinks that a composition or scheme ought not to be sanctioned by reason of the debtor's conduct, it may adjudge him bankrupt (R. 273 (5)).

(8) All payments, unless the Board otherwise orders, are to be made into and out of the Bank of England (R. 273 (6)).

(9) The first meeting may be held on the day appointed for the public examination, or on any other day fixed by the official receiver, and if a quorum is not present, it will not be necessary to adjourn the meeting (R. 273 (7)).

(10) Meetings are, unless the official receiver for special reasons otherwise determines, held in the town or place in which the Court usually holds its sittings, or in which the office of the official receiver is situate (R. 273 (8)).

(11) Notices of sittings of the Court, or of meetings, other than first meetings, are not sent to creditors whose debts do not exceed £2 (R. 273 (9, 11)).

(12) Six months are allowed for the declaration and distribution of a dividend (R. 273 (12)).

(13) The estate must be realised with all despatch, and where practicable distributed in one dividend (R. 273 (13)).

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(14) A lease may be disclaimed without leave of the Court, where the bankrupt has not sublet the demised premises or any part thereof, or created any charge or mortgage upon the lease (R. 320 (1)).

(B) Administration Orders under S. 122.

The Act of 1883 confers a great benefit on certain small debtors. In the first place, when judgment has been obtained in a County Court against a debtor, and he alleges that he is unable to pay the amount forthwith, and that his whole indebtedness amounts to a sum not exceeding £50, the County Court may make an administration order under s. 122; and, secondly, the Court has a like power where an application is made to commit a judgment debtor whose liabilities do not exceed £50 (*c*). By s. 122 (*d*) :—

S. 122. Power for County Court to make administration order instead of order for payment by instalments.

(1) "Where a judgment has been obtained in a County Court and the debtor is unable to pay the amount forthwith, and alleges that his whole indebtedness amounts to a sum not exceeding fifty pounds, inclusive of the debt for which the judgment is obtained, the County Court may make an order providing for the administration of his estate, and for the payment of his debts by instalments or otherwise, and either in full or to such extent as to the County Court under the circumstances of the case appears practicable, and subject to any conditions as to his future earnings or income which the Court may think just.

(2) "The order shall not be invalid by reason only that the total amount of the debts is found at any time to exceed fifty pounds, but in such case, the County Court may, if it thinks fit, set aside the order.

(3) "Where, in the opinion of the County Court in which the judgment is obtained, it would be inconvenient that that Court should administer the estate, it shall cause a certificate of the judgment to be forwarded to the County Court in the district of which the debtor or the majority of the creditors resides or reside, and thereupon the latter County Court shall have all the powers which it would have under this section had the judgment been obtained in it.

(4) "Where it appears to the registrar of the County

(*c*) R. 358.
(*d*) See Rs. (A. O.) under s. 212, *post*, p. 269.

Court that property of the debtor exceeds in value ten pounds, he shall, at the request of any creditor, and without fee, issue execution against the debtor's goods, but the household goods, wearing apparel, and bedding of the debtor or his family, and the tools and implements of his trade to the value in the aggregate of twenty pounds, shall to that extent be protected from seizure.

(5) "When the order is made no creditor shall have any remedy against the person or property of the debtor in respect of any debt which the debtor has notified to a County Court, except with the leave of that County Court, and on such terms as that Court may impose; and any County Court or Inferior Court in which proceedings are pending against the debtor in respect of any such debt shall, on receiving notice of the order, stay the proceedings, but may allow costs already incurred by the creditor, and such costs may, on application, be added to the debt notified.

(6) "If the debtor makes default in payment of any instalment payable in pursuance of any order under this section, he shall, unless the contrary is proved, be deemed to have had since the date of the order the means to pay the sum in respect of which he has made default, and to have refused or neglected to pay the same.

(7) "The order shall be carried into effect in such manner as may be prescribed by general rules.

(8) "Money paid into Court under the order shall be appropriated first in satisfaction of the costs of the plaintiff in the action, next in satisfaction of the costs of administration (which shall not exceed two shillings in the pound on the total amount of the debts), and then in liquidation of debts in accordance with the order.

(9) "Notice of the order shall be sent to the registrar of County Court judgments, and be posted in the office of the County Court of the district in which the debtor resides, and sent to every creditor notified by the debtor, or who has proved.

(10) "Any creditor of the debtor, on proof of his debt before the registrar shall be entitled to be scheduled as a creditor of the debtor for the amount of his proof.

(11) "Any creditor may in the prescribed manner object to any debt scheduled, or to the manner in which payment is directed to be made by instalments (*post*, p. 269).

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(12) "Any person who after the date of the order becomes a creditor of the debtor, shall, on proof of his debt before the registrar, be scheduled as a creditor of the debtor for the amount of his proof, but shall not be entitled to any dividend under the order until those creditors who are scheduled as having been creditors before the date of the order have been paid to the extent provided by the order.

(13) "When the amount received under the order is sufficient to pay each creditor scheduled to the extent thereby provided, and the costs of the plaintiff and of the administration, the order shall be superseded, and the debtor shall be discharged from his debts to the scheduled creditors.

(14) "In computing the salary of a registrar under the County Courts Acts every creditor scheduled, not being a judgment creditor, shall count as a plaint" (cf. Rs. (A. O.)).

(C.) Committal of Judgment Debtors.

S. 103.

As to the committal of judgment debtors, the Lord Chancellor may make (and has made) an order that the powers and jurisdiction of the High Court under s. 5 of the Debtors Act, 1869, may be assigned to and vested in the bankruptcy judge (*e*): and County Courts within the jurisdiction of which a judgment debtor is or resides have jurisdiction under s. 5 of the Debtors Act, 1869, though the amount of the judgment debt may exceed £50 (s. 103 (4)).

Where, under s. 5 of the D. A. 1869, application is made to a Court having bankruptcy jurisdiction, for the committal of a judgment debtor, the Court may, if it thinks fit, decline to commit, and in lieu thereof, with the consent of the judgment creditor, and on payment by him of the prescribed fee, make a *receiving order* against the debtor. In such case the judgment debtor shall be deemed to have committed an act of bankruptcy at the time the order is made (*f*): but if the debtor is proved to have committed any previous act of bankruptcy, then the bankruptcy shall have relation back to and commence at the time of the first of the acts of bankruptcy proved to have been committed by the debtor within

(*e*) See R. 355.

(*f*) S. 103. See Rs. 355—362, and C. C. Rules, 1889, *post*, p. 265; and see Debtors Act, s. 5, *infra*, and Orders, *post*, pp. 273—276. As to getting a receiving order against a foreigner under s. 103, see *ante*, p. 16.

three months next preceding the date of the order; and s. 48 of the principal Act shall apply as if the debtor had been adjudged bankrupt on a bankruptcy petition presented at the date of the receiving order (B. A. 1890, s. 20).

Where an application to commit is made to a County Court, and it appears to the Court that the *total liabilities* of the judgment debtor *do not exceed fifty pounds*, the Court may, if it thinks that an order for committal ought not to be made, make an *administration order* under s. 122 of the Act in lieu of making a receiving order (*g*).

S. 5 of the Debtors Act, 1869, enacts that:—

Saving of power of committal for small debts.

5. Subject to the provisions hereinafter mentioned, and to the prescribed rules, any Court may commit to prison for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any order or judgment of that or any other competent Court.

Provided—(1) That the jurisdiction by this section given of committing a person to prison shall, in the case of any Court other than the superior Courts of Law and Equity, be exercised only subject to the following restrictions; that is to say,

(*a*) Be exercised only by a judge or his deputy, and by an order made in open Court and showing on its face the ground on which it is issued:

(*b*) *Repealed.*

(*c*) Be exercised only as respects a judgment of a County Court by a County Court judge or his deputy.

(2) That such jurisdiction shall only be exercised where it is proved to the satisfaction of the Court that the person making default either has or has had since the date of the order or judgment the means to pay the sum in respect of which he has made default, and has refused or neglected or refuses or neglects to pay the same.

Proof of the means of the person making default may be given in such manner as the Court thinks just; and for the purposes of such proof the debtor and any witnesses may be summoned and examined on oath, according to the prescribed rules.

Any jurisdiction by this section given to the superior Courts may be exercised by a judge sitting in Chambers, or otherwise, in the prescribed manner.

For the purposes of this section, any Court may direct any debt due from any person in pursuance of any order or judgment of that or any other competent Court to be paid by instalments, and may from time to time rescind or vary such order.

Persons committed under this section by a superior Court may be

(*g*) R. 358: see *ante*, p. 174.

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committed to the prison in which they would have been confined if arrested on a writ of *capias ad satisfaciendum*, and every order of committal by any superior Court shall, subject to the prescribed rules, be issued, obeyed, and executed in the like manner as such writ.

This section, so far as it relates to any County Court, shall be deemed to be substituted for sections ninety-eight and ninety-nine of the County Court Act, 1846, and that Act and the Acts amending the same shall be construed accordingly, and shall extend to orders made by the County Court with respect to sums due in pursuance of any order or judgment of any Court other than a County Court.

No imprisonment under this section shall operate as a satisfaction or extinguishment of any debt or demand or cause of action, or deprive any person of any right to take out execution against the lands, goods, or chattels of the person imprisoned, in the same manner as if such imprisonment had not taken place.

Any person imprisoned under this section shall be discharged out of custody upon a certificate signed in the prescribed manner to the effect that he has satisfied the debt or instalment of a debt in respect of which he was imprisoned, together with the prescribed costs (if any).

(D.) Deceased Insolvent Debtors.

The estates of persons dying insolvent may now be administered in bankruptcy. By s. 125:—

S. 125. Administration in bankruptcy of estate of person dying insolvent.

(1) "Any creditor of a deceased debtor whose debt would have been sufficient to support a bankruptcy petition against such debtor, had he been alive, may present to the Court a petition in the prescribed form praying for an order for the administration of the estate of the deceased debtor, according to the Law of Bankruptcy.

(2) "Upon the prescribed notice being given to the legal personal representative of the deceased debtor, the Court may, in the prescribed manner, upon proof of the petitioner's debt, unless the Court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased, make an order for the administration in bankruptcy of the deceased debtor's estate, or may upon cause shown dismiss such petition with or without costs."

(3) By sub-s. 3, *repealed*, no such order of administration could be made until the expiration of two months from the date of probate or letters of administration, unless the legal personal representative of the deceased concurred, or unless the petitioner proved an act of bankruptcy committed by the deceased within three months prior to his decease, but

an order may *now* be made without such concurrence or proof (B. A. 1890, ss. 21 (1), 29).

(4) "A petition for administration under this section shall not be presented to the Court after proceedings have been commenced in any Court of justice for the administration of the deceased debtor's estate, but that Court may [in such case, on the application of any creditor, and] (*h*) on proof that the estate is insufficient to pay its debts, *transfer* the proceedings to the Court exercising jurisdiction in bankruptcy, and thereupon such last-mentioned Court may, in the prescribed manner, make an order for the administration of the estate of the deceased debtor, and the like consequences shall ensue as under an administration order made on the petition of a creditor.

(5) "Upon an order being made for the administration of a deceased debtor's estate, the property of the debtor shall vest in the *official receiver* of the Court, as trustee thereof, and he shall forthwith proceed to realise and distribute the same in accordance with the provisions of this Act.

(6) "With the modifications hereinafter mentioned, all the provisions of Part III. of this Act, relating to the administration of the property of a bankrupt, shall, so far as the same are applicable, apply to the case of an administration order under this section in like manner as to an order of adjudication under this Act. [*i.e.* ss. 37–65: cf. p. 59.

(7) "In the administration of the property of the deceased debtor under an order of administration, the official receiver shall have regard to any claim by the legal personal representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor's estate, and such claims shall be deemed a *preferential* debt under the order, and be payable in full, out of the debtor's estate, in priority to all other debts (*i*).

(8) "If, on the administration of a deceased debtor's estate, any *surplus* remains in the hands of the official receiver, after payment in full of all the debts due from the debtor, together with the costs of the administration and interest as provided by this Act in case of bankruptcy, such

(*h*) The words within [ ] are now repealed, and the last-mentioned Court may make a transfer without a creditor's application whenever it is satisfied that the estate is insufficient to pay its debts: B. A. 1890, ss. 21 (2), 29.

(*i*) This sub-section is not affected by the Preferential Payments in Bankruptcy Act, 1888 (51 & 52 Vict. c. 62): see ss. 2, 3 of that Act, *ante*.

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surplus shall be paid over to the legal personal representative of the deceased debtor's estate, or dealt with in such other manner as may be prescribed.

(9) "Notice to the legal personal representative of a deceased debtor of the presentation by a creditor of a petition under this section shall, in the event of an order for administration being made thereon, be deemed to be equivalent to *notice of an act of bankruptcy*, and after such notice no payment or transfer of property made by the legal personal representative shall operate as a discharge between himself and the official receiver; save as aforesaid nothing in this section shall invalidate any payment made or any act or thing done in good faith by the legal personal representative before the date of the order for administration.

(10) "Unless the context otherwise requires, 'Court,' in this section, means the Court within the jurisdiction of which the debtor resided or carried on business for the greater part of the six months immediately prior to his decease; 'creditor' means one or more creditors qualified to present a bankruptcy petition, as in this Act provided.

(11) "General rules, for carrying into effect the provisions of this section, may be made in the same manner and to the like effect and extent as in bankruptcy" (Cf. Rs. 274—9A).

B. A. 1890, s. 21 (3).

Lastly, in cases of administration in bankruptcy, in pursuance of the above section and s. 21 of the B. A. 1890, the creditors have the same powers as to the appointment of trustees and committees of inspection as they have in other cases where the estate of a debtor is being administered or dealt with in bankruptcy, and the provisions of the Acts relating to trustees and committees apply to trustees and committees so appointed (B. A. 1890, s. 21 (3)).

The petition should, unless the Court otherwise directs, be served on each executor who has proved the will, or on each person who has taken out letters of administration. If an administration order be made, the executor or administrator, or an executor *de son tort*, must furnish the official receiver with an account of his dealings with the estate and other particulars. Where the property is not likely to exceed in value £300, s. 121 is, in general, to apply (Rs. 274—279A).

Sub-s. 6 incorporates Part III. of the Act, that is, ss. 37 to 65, but s. 27, which is in Part I., and which enables an official receiver or trustee to examine witnesses, has been held not available in the case of an administration order under s. 125 (*k*). Again, s. 47, which deals with voluntary settlements, is not applicable to cases under s. 125 (*l*). And s. 45, which imposes restrictions on the rights of execution creditors, is also inapplicable (*m*).

The power of transfer under sub-s. 4 is discretionary, and will not necessarily be ordered where the estate is shown to be insolvent (*n*). The circumstance that the executor has a right of retainer and the liberty not to plead the Statute of Limitations to a debt, which rights would be recognised in the Chancery Division, but might be taken away by a transfer to a Court exercising bankruptcy jurisdiction, is not a ground for such transfer (*n*). An executor, when the amount of the debt due to him exceeds the value of the assets of the deceased, may, before possession has been taken by a trustee under an administration order, successfully assert his right to retain the assets *in specie* (*o*). An executor who in ignorance of his rights handed the assets to the official receiver, acting under sub-s. 5, and proved for his debt, but, on discovering his error, withdrew his proof before it was dealt with, was held entitled to be paid back the amount he would have been entitled to retain (*p*).

S. 38 applies to cases under s. 125; and so, where on mutual dealings between A. and the deceased B., the former owed B. a debt, and B. was under a liability to A. which ripened into a debt after his decease, set-off was allowed (*q*).

(*k*) *In re Hewitt*, 15 Q. B. D. 159; *Hasluck* v. *Clark*, (1899) 1 Q. B. 699.
(*l*) *In re Gould*, 19 Q. B. D. 92; *Hasluck* v. *Clark*, *sup.*
(*m*) *Hasluck* v. *Clark*, *sup.*: see *Watkins* v. *Barnard*, (1897) 2 Q. B. 521, *ante*, p. 37.
(*n*) *In re Baker*, 44 Ch. D. 262.
(*o*) *In re Gilbert*, *Ex p. Gilbert*, (1898) 1 Q. B. 282.
(*p*) *In re Rhoades*, (1899) 2 Q. B. 347.
(*q*) *Watkins* v. *Lindsay*, 5 Man. 25.

CHAPTER XIII.

PUNISHMENT OF FRAUDULENT DEBTORS.

CHAP. XIII.

PART II. of the Debtors Act, 1869, contains a list of offences by fraudulent debtors. As the provisions of that Act are important, a few of the principal sections are here set out. To understand these sections it is, however, necessary, in the first place, to bear in mind that references in any Act to the Bankruptcy Act, 1869, are to be construed and have effect as if they were made to the Bankruptcy Act, 1883 (*a*). Secondly, ss. 11 and 12 of the D. A. 1869, relating to the punishment of fraudulent debtors and imposing a penalty for absconding with property, are to have effect as if there were substituted therein for the words "if after the presentation of a bankruptcy petition against him," the words, "if after the presentation of a bankruptcy petition *by or against him*" (*b*).

S. 149.

S. 163.

Extension of penal provisions of 32 & 33 Vict. c. 62, to petitioning debtors, &c.

Again, the provisions of the D. A. 1869, as to offences by *bankrupts* are to apply to any person, *whether a trader or not*, in respect of whose estate a receiving order has been made, as if the term "bankrupt" in that Act included a person in respect of whose estate a *receiving order* had been made (*b*).

Lastly, s. 11 of the D. A. 1869, will have effect as if there were substituted therein for the words "if within four months next before the presentation of a bankruptcy petition *against* him" the words "if within four months next before the presentation of a bankruptcy petition *by or against* him, or in case of a receiving order made under s. 103 of the B. A. 1883, before the date of the order" (B. A. 1890, s. 26) (*c*).

(*a*) S. 149.
(*b*) S. 163.
(*c*) This will overrule *In re Burden*, 21 Q. B. D. 24.

Ss. 11 and 12 of the Debtors Act are as follows :—

Punishment of fraudulent debtors.

11. Any person adjudged bankrupt, and any person whose affairs are liquidated by arrangement in pursuance of the Bankruptcy Act, 1869, shall, in each of the cases following, be deemed guilty of a misdemeanour, and on conviction thereof shall be liable to be imprisoned for any time not exceeding two years, with or without hard labour; that is to say,

(1) If he does not, to the best of his knowledge and belief, fully and truly discover to the trustee administering his estate for the benefit of his creditors all his property, real and personal, and how, and to whom, and for what consideration, and when he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade (if any), or laid out in the ordinary expense of his family, unless the jury is satisfied that he had no intent to defraud:

(2) If he does not deliver up to such trustee, or as he directs, all such part of his real and personal property as is in his custody or under his control, and which he is required by law to deliver up, unless the jury is satisfied that he had no intent to defraud:

(3) If he does not deliver up to such trustee, or as he directs, all books, documents, papers, and writings in his custody or under his control relating to his property or affairs, unless the jury is satisfied that he had no intent to defraud:

(4) If after the presentation of a bankruptcy petition against him (*d*) or the commencement of the liquidation, or within four months next before such presentation or commencement, he conceals any part of his property to the value of ten pounds or upwards, or conceals any debt due to or from him, unless the jury is satisfied that he had no intent to defraud:

(5) If after the presentation of a bankruptcy petition against him (*d*) or the commencement of the liquidation, or within four months next before such presentation or commencement, he fraudulently removes any part of his property of the value of ten pounds or upwards:

(6) If he makes any material omission in any statement relating to his affairs, unless the jury is satisfied that he had no intent to defraud:

(7) If, knowing or believing that a false debt has been proved by any person under the bankruptcy or liquidation, he fail for the period of a month to inform such trustee as aforesaid thereof:

(8) If after the presentation of a bankruptcy petition against him (*d*) or the commencement of the liquidation, he prevents the production of any book, document, paper, or writing affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law:

(*d*) See *ante*, p. 182.

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(9) If after the presentation of a bankruptcy petition against him (*e*) or the commencement of the liquidation, or within four months next before such presentation or commencement, he conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law:

(10) If after the presentation of a bankruptcy petition against him (*e*) or the commencement of the liquidation, or within four months next before such presentation or commencement, he makes or is privy to the making of any false entry in any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law:

(11) If after the presentation of a bankruptcy petition against him (*e*) or the commencement of the liquidation, or within four months next before such presentation or commencement, he fraudulently parts with, alters, or makes any omission, or is privy to the fraudulently parting with, altering, or making any omission in any document affecting or relating to his property or affairs:

(12) If after the presentation of a bankruptcy petition against him (*e*) or the commencement of the liquidation, or at any meeting of his creditors within four months next before such presentation or commencement, he attempts to account for any part of his property by fictitious losses or expenses:

(13) If within four months next before the presentation of a bankruptcy petition against him (*e*) or the commencement of the liquidation, he, by any false representation or other fraud, has obtained any property on credit and has not paid for the same:

(14) If within four months next before the presentation of a bankruptcy petition against him (*e*) or the commencement of the liquidation, he, being a trader, obtains, under the false pretence of carrying on business and dealing in the ordinary way of his trade, any property on credit and has not paid for the same, unless the jury is satisfied that he had no intent to defraud:

(15) If within four months next before the presentation of a bankruptcy petition against him (*e*) or the commencement of the liquidation, he, being a trader, pawns, pledges, or disposes of otherwise than in the ordinary way of his trade any property which he has obtained on credit and has not paid for, unless the jury is satisfied that he had no intent to defraud:

(16) If he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to any agreement with reference to his affairs or his bankruptcy or liquidation.

(*e*) See *ante*, p. 182.

Penalty for absconding with property.

S. 12. If any person who is adjudged bankrupt or has his affairs liquidated by arrangement after the presentation of a bankruptcy petition against him (see *ante*, p. 182) or the commencement of the liquidation, or within four months before such presentation or commencement, quits England and takes with him, or attempts or makes preparation for quitting England and for taking with him, any part of his property to the amount of twenty pounds or upwards, which ought by law to be divided amongst his creditors, he shall (unless the jury is satisfied that he had no intent to defraud) be guilty of felony, punishable with imprisonment for a time not exceeding two years, with or without hard labour.

S. 31 (*ante*, p. 171) creates a new misdemeanour, which may be committed by an undischarged bankrupt, and which is punishable as an offence under the Debtors Act, 1869.

Further, by the Debtors Act, 1869:—

Penalty on fraudulently obtaining credit, &c.

Any person shall in each of the cases following be deemed guilty of a misdemeanour, and on conviction thereof shall be liable to be imprisoned for any time not exceeding one year, with or without hard labour; that is to say,

(1) If in incurring any debt or liability he has obtained credit under false pretences, or by means of any other fraud:

(2) If he has, with intent to defraud his creditors, or any of them, made or caused to be made any gift, delivery, or transfer of or any charge on his property:

(3) If he has, with intent to defraud his creditors, concealed or removed any part of his property since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him (s. 13).

False claim, &c., a misdemeanour.

If any creditor in any bankruptcy or liquidation by arrangement or composition with creditors in pursuance of the Bankruptcy Act, 1869 (see *ante*, p. 182), wilfully and with intent to defraud makes any false claim, or any proof, declaration, or statement of account which is untrue in any material particular, he shall be guilty of a misdemeanour, punishable with imprisonment not exceeding one year, with or without hard labour (s. 14).

Debts incurred by fraud.

Where a debtor makes any arrangement or composition with his creditors under the provisions of the Bankruptcy Act, 1869 (see *ante*, p. 182), he shall remain liable for the unpaid balance of any debt which he incurred or increased, or whereof before the date of the arrangement or composition he obtained forbearance, by any fraud, provided the defrauded creditor has not assented to the arrangement or composition otherwise than by proving his debt and accepting dividends (*f*).

(*f*) Debtors Act, s. 15. Cf. s. 3 (12) of B. A. 1890, and s. 19 of B. A. 1883, *ante*, pp. 57, 60. See also *In re Crosley*, 35 Ch. D. 266.

CHAP. XIII.

Order by Court for prosecution on report of trustee.

Where a *trustee in any bankruptcy* (*g*) reports to any Court exercising jurisdiction in bankruptcy that in his opinion a bankrupt has been guilty of any offence under this Act, or where the Court is satisfied upon the representation of any creditor or member of the committee of inspection that there is ground to believe that the bankrupt has been guilty of any offence under this Act, the Court shall, if it appears to the Court that there is a reasonable probability that the bankrupt may be convicted, order the *trustee* (*g*) to prosecute the bankrupt for such offence (*h*).

Expenses of prosecutions.

17. Where the prosecution of the bankrupt under this [*i.e.*, the Debtors] Act is ordered by any Court, then, on the production of the order of the Court, the expenses of the prosecution shall be allowed, paid, and borne as expenses of prosecution for felony are allowed, paid and borne.

S. 165.
Power for Court to commit for trial.

Committal and Prosecution of the Debtor.—Where there is, in the opinion of the Court, ground to believe that the bankrupt or any other person has been guilty of any offence which is by statute made a misdemeanour in cases of bankruptcy, the Court may commit the bankrupt or such other person for trial.

For the purpose of committing the bankrupt or such other person for trial, the Court shall have all the powers of a stipendiary magistrate as to taking depositions, binding over witnesses to appear, admitting the accused to bail, or otherwise, but nothing herein shall be construed as derogating from the powers or jurisdiction of the High Court (s. 165).

S. 166.
Public prosecutor to act in certain cases.

Where the Court orders the prosecution of any person for any offence under the Debtors Act, 1869, or Acts amending it, or for any offence arising out of or connected with any bankruptcy proceedings, it shall be the duty of the director of public prosecutions to institute and carry on the prosecution (s. 166).

S. 167.
Criminal liability after discharge or composition.

A debtor guilty of any criminal offence is not exempt from being proceeded against therefor by reason that he has obtained his discharge or that a composition or scheme of arrangement has been accepted or approved (s. 167).

S. 164.

(*g*) By s. 164 this now includes "official receiver," and the section applies also to offences under the B. A. 1883.

(*h*) Debtors Act, s. 16. As to report by official receiver, see R. 333. An order under this section will not protect the trustee from an action for malicious prosecution, for he may have been guilty of malice: *Mittens* v. *Foreman*, 58 L. J. Q. B. 40. The Court must consider the report and determine whether it will order a prosecution: *In re Dunn*, (1902) 1 K. B. 107.

CHAPTER XIV.

APPEALS.

S. 104.

Appeals in bankruptcy.

By s. 104, every Court having jurisdiction in bankruptcy under this Act may review, rescind, or vary any order made by it under its bankruptcy jurisdiction (*a*).

This jurisdiction can only be exercised by the tribunal which makes the order, and so a County Court judge cannot review an order made by the registrar (*b*).

Orders in bankruptcy matters are, at the instance of any person aggrieved, subject to appeal as follows:

From High Court.

An appeal shall lie from the order of the High Court to the Court of Appeal:

From Court of Appeal.

An appeal shall, with the leave of the Court of Appeal, but not otherwise, lie from the order of that Court to the House of Lords (*a*).

When leave will be given to appeal to House of Lords.

Leave to appeal to the House of Lords will not be granted unless the question involved is one of law or equity, and also of sufficient difficulty or importance to merit a review by the highest tribunal (*c*).

From County Court.

An appeal shall lie from the order of a County Court to a Divisional Court, of which the judge to whom bankruptcy business shall for the time being be assigned shall for the purpose of hearing any such appeal be a member. The decision of such Divisional Court upon any such appeal shall be final and conclusive, unless in any case it shall seem fit to the said Divisional Court or to the Court of Appeal to give special leave to appeal therefrom to the Court of Appeal, whose decision in such case shall be final and conclusive (*d*). The notice of appeal from a County Court should state the grounds of appeal (*e*).

(*a*) S. 104.
(*b*) *In re Maugham*, 21 Q. B. D. 21.
(*c*) *Ex p. Attwater*, 5 Ch. D. 27.
(*d*) Bankruptcy Appeals (County Courts) Act, 1884 (47 Vict. c. 9). As to interlocutory orders pending appeal, see R. 134A.
(*e*) Regulations, 18th February, 1890, *post*.

CHAP. XIV.

Who is a "person aggrieved"?

A "person aggrieved" has been defined as a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something (*f*). An unpaid creditor, for instance, may be a person aggrieved by the granting of an order of discharge to a bankrupt (*g*).

No appeal will be entertained except in conformity with such general rules as may for the time being be in force in relation to the appeal (*h*).

These rules *inter alia* provide that, *except by leave of the Court*, there shall be no appeal to the Court of Appeal from any order made by consent, or as to costs only, or relative to property when the money or money's worth involved does not exceed £50 (*i*). And no appeal shall be brought in respect of the omission by the Court appealed from to exercise any discretionary power unless the Court in its judgment or on application made at the hearing have expressly refused to exercise such power, in which case the refusal may be made a ground of appeal (*k*).

Unless the Court of Appeal under special circumstances extend the time, no appeal to it from any order of the Court shall be brought after the expiration of twenty-one days. This period is to be calculated from the time at which the order is signed, entered, or otherwise perfected, or in the case of a refusal of an application, from the date of such refusal (*l*).

S. 139. Appeal from Board of Trade or official receiver to High Court.

Appeals from Board of Trade or Official Receiver.— Where by the Act an appeal to the High Court is given against any decision of the Board of Trade, or of the official receiver, the appeal shall be brought within twenty-one days from the time when the decision appealed against is pronounced or made (*m*).

An appeal is expressly allowed against the Board of Trade (1) where it objects to the appointment of a trustee (*n*),

(*f*) *Ex p. Sidebotham*, 14 Ch. D. 458; *Ex p. Official Receiver, In re Reed and Bowen*, 19 Q. B. D. 174; *In re Lamb*, (1894) 2 Q. B. 805.
(*g*) *Ex p. Castle Mail Packets Co.*, 18 Q. B. D. 154.
(*h*) S. 104: see *In re Vitoria*, (1894) 1 Q. B. 259.
(*i*) R. 129. As to "Court of Appeal," see R. 3.
(*k*) R. 129.
(*l*) R. 130: see *In re Helsby*, (1894) 1 Q. B. 742. As to security for costs of an appeal and other practical points, see Rs. 3, 131—134.
(*m*) S. 139. See R. 6 (*d*).
(*n*) S. 21, *ante*, p. 61.

(2) where it removes a trustee (*o*), (3) where it grants or withholds the trustee's release (*p*), (4) where it refuses to admit claims on money paid into the Bankruptcy Estates Account (*q*). An appeal lies against an act or decision of the official receiver as to his examination, admission, or rejection of proofs before the appointment of a trustee (*r*), and so too against the decision of any chairman of a meeting as to a proof (*s*).

Appeals from Trustee.—If the bankrupt or a creditor or any other person is aggrieved by any act or decision of the trustee, he may appeal (s. 90, *ante*, p. 154); *e.g.*, an appeal lies (1) where the trustee pays a sum to the bankrupt's apprentice or articled clerk (*t*), (2) against his estimate of a contingent debt or liability (*u*), (3) against his decision as to a creditor's proof (*x*).

Security for Costs of Appeal to the Court of Appeal.—A party who appeals to the Court of Appeal must as a rule deposit £20 in the High Court as security for costs, and must follow the directions contained in Rs. 129—134.

(*o*) S. 86; B. A. 1890, s. 19, *ante*, p. 135.
(*p*) S. 82 (1), *ante*, p. 154.
(*q*) S. 162 (4), *ante*, p. 130.
(*r*) Sch. II., R. 27.
(*s*) Sch. I., R. 14.
(*t*) S. 41, *ante*, p. 120.
(*u*) S. 37, *ante*, p. 113.
(*x*) Sch. II., R. 24: cf. R. 230. The appeal from the rejection of a proof is to be made within twenty-one days (R. 220), except where a dividend is about to be declared under the circumstances mentioned in R. 232. when the time is seven days.

CHAPTER XV.

COSTS.

Generally.
S. 105 (1).

Generally.—The costs of and incidental to any proceeding in Court are in the discretion of the Court, provided that where any issue is tried by a jury the costs are to follow the event, unless, upon application made at the trial for good cause shown, the judge shall otherwise order (*a*). Again, in the absence of any express direction, the costs of an opposed motion are to follow the event, and to be taxed as between party and party (*b*). The Court has power to direct that the costs of any matter shall be taxed and paid as between party and party, solicitor and client, or that full costs, charges, and expenses shall be allowed, or to award a lump sum (*c*). On production of an office copy of an order directing payment of costs, the taxing-master (or in a County Court the registrar) will tax them (*d*).

We have already seen that the costs of solicitors, managers, accountants, auctioneers, brokers and others must be taxed (*e*), and where the taxation has been by a County Court registrar, the Board of Trade may require it to be reviewed by a bankruptcy taxing-master of the High Court (*f*).

Official Receiver.—The official receiver's remuneration is fixed by the Board of Trade with the concurrence of the Treasury (*g*). Where, after the presentation of a petition, the official receiver is appointed *interim* receiver of the debtor's property, the person, on whose application the appointment is made, must deposit with the official receiver

(*a*) S. 105 (1).
(*b*) R. 108.
(*c*) R. 108.
(*d*) Rs. 110, 111.
(*e*) S. 73, *ante*, p. 139.
(*f*) R. 124. As to the limitation on this Rule, see *In re Hunt*, (1898) 1 Q. B. 287, *post*, p. 192.
(*g*) S. 128, *ante*, p. 158.

£5, and such further sum as the Court may order for the expenses of the official receiver (*h*). The official receiver, on the presentation of a petition by the debtor or by a creditor, receives a deposit of £5 (*i*), and where the proceeds of the estate will not pay costs necessarily incurred by the official receiver in excess of the deposit between the making of a receiving order and the conclusion of the first meeting, the Court may order his costs to be paid by the party instituting the proceedings (*k*).

The official receiver is not to be personally liable for the costs of an appeal from his decision rejecting a proof (*l*).

Trustee.—The subject of the trustee's remuneration, costs, and expenses is elsewhere dealt with (*m*). A trustee should remember that if he makes an unsuccessful application to the Court against any person, he may be personally liable for the costs if the assets are insufficient: he should, therefore, where the estate is small, before making an application the success of which is doubtful, obtain an indemnity against the costs from the creditors (*n*).

Special Managers.—Where a special manager is appointed and his remuneration is not fixed by the creditors, he is to be paid according to such scale as the Board of Trade may from time to time direct (*o*).

Witnesses.—Witnesses may be subpœnaed, and their costs may in the discretion of the Court be allowed whether they are examined or not, but their allowance for attendance is in no case to exceed the highest rate of the allowance mentioned in the official scale of costs (*p*).

Petitioning and other Creditors, and Debtors.—All proceedings down to and including the making of a receiving order are at the cost of the petitioner; but, when the receiving order is made, the petitioning creditor's costs, including the costs of the bankruptcy notice, if any, sued out by him, are to be taxed and payable out of the proceeds

(*h*) Rs. 170—175.
(*i*) R. 147.
(*k*) R. 183.
(*l*) R. 231.
(*m*) *Ante*, pp. 137, 138; Sch. I., R. 20.
(*n*) *Ex p. Angerstein*, L. R. 9 Ch. 479. As to appeals, see *post*, p. 193. As to where the official receiver acts as trustee, see *In re Dale*, 14 Q. B. D. 48; *In re Galey*, 7 Mor. 253. As to actions against trustee or official receiver, see R. 108 (3).
(*o*) See s. 12, *ante*, p. 49; R. 343.
(*p*) Rs. 61—65.

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of the estate in the order of priority prescribed (*q*). A petitioning creditor who is resident abroad, or whose estate is vested in a trustee under any bankruptcy law, or against whom a petition under the Act is pending, or who has made default in payment of any costs ordered by any Court to be paid by him to the debtor, may be ordered to give security for costs to the debtor (*r*).

A creditor must bear the cost of proving his debt, unless the Court otherwise orders, and the costs of amending the valuation of his security and proof (*s*).

The costs of summoning a meeting of creditors by any person other than the official receiver or trustee are to be paid by the person at whose instance it is summoned, but the same will be repaid to him out of the estate if the creditors or the Court so direct (*t*).

Solicitors.—We have seen that solicitors must, on request by the trustee, send their costs to be taxed, and the taxing-master must be satisfied that the solicitors have been duly employed (*u*). A solicitor must in his bill of costs give credit for any sum or security he may have received, as a deposit for future expenses, from a debtor presenting a petition against himself (*x*). There is an official scale of solicitors' costs, but, subject to the provisions of No. 1 of that scale, where the estimated assets of a debtor do not exceed £300, three-fifths only of the ordinary charges are to be allowed, disbursements being added, and if in error any charges have been allowed or paid on the higher scale, and the gross proceeds of the assets are found afterwards not to exceed £300, the excess must be disallowed, and, if paid, repaid to the trustee (*y*). This rule, however, only applies to those costs which are directed by the Act to be paid out of the estate, *e.g.*, costs paid to the solicitor of the trustee, and it is not applicable to the costs of strangers to the bankruptcy in proceedings taken against them by the trustee (*z*): nor does it apply to conveyancing business (*a*)

(*q*) Rs. 125, 183: cf. Rs. 205, 206.
(*r*) R. 148.
(*s*) Sch. II., Rs. 6, 13.
(*t*) R. 254.
(*u*) Ss. 57, 73, *ante*, pp. 151, 139.
(*x*) R. 113.
(*y*) R. 112 (2). See *post*, p. 277. As to re-taxation where the assets do not, as previously estimated, realise more than £100 or £200 respectively, see R. 112A.
(*z*) *In re Dowson*, 21 Q. B. D. 417. Rule 124 is similarly restricted: *In re Hunt*, (1898) 1 Q. B. 287.
(*a*) *In re Parfitt*, 23 Q. B. D. 40.

Appeals.—As we have seen (p. 189), an appellant must make a deposit of £20, which may be increased, diminished, or dispensed with by the Court of Appeal, as security for costs (*b*). Except by leave of the Court no appeal is allowed to the Court of Appeal as to costs only (*c*). A trustee who appeals against an order of the Court, and fails, may be ordered to pay the costs personally (*d*). And so may a trustee who is respondent to a successful appeal, unless he makes out a case to have them paid out of the estate (*e*).

Order of Payment of Costs.—The assets in every matter remaining after payment of the actual expenses incurred in their realisation, are, subject to any order of the Court, to be liable to the payments mentioned in R. 125, and such payments are to be made in the order of priority mentioned in that Rule (*f*).

Joint and Separate Estates.—When the joint estate of co-debtors is insufficient to pay the costs incurred in respect thereof, such costs may, under certain circumstances mentioned in R. 128, be paid out of the separate estates; and so also, costs incurred in respect of the separate estates may be paid out of the joint estate (*g*).

Scale of Costs.—As to this, see *post*, p. 277, and *ante*, p. 192.

(*b*) R. 131. Cf. R. 3.
(*c*) R. 129.
(*d*) *In re Malden*, 3 Mor. 185.
(*e*) *In re Mackenzie*, (1899) 2 Q. B. 566.
(*f*) As to administration orders under s. 122, see s. 122 (8), *ante*, p. 174.
(*g*) R. 128.

APPENDIX.

[Note.—*The marginal notes are added by the Author.*]

SCHEDULES.

THE FIRST SCHEDULE.

[Cf. s. 15 (2), *ante*, p. 54.]

MEETINGS OF CREDITORS.

[Cf. Rs. 249—257.]

SECT. 15.

1. THE first meeting of creditors shall be summoned for a day not later than fourteen days after the date of the receiving order, unless the Court for any special reason deem it expedient that the meeting be summoned for a later day.

2. The official receiver shall summon the meeting by giving not less than seven days' notice of the time and place thereof in the *London Gazette* and in a local paper. [Cf. Rs. 249—257.]

3. The official receiver shall also, as soon as practicable, send to each creditor mentioned in the debtor's statement of affairs, a notice of the time and place of the first meeting of creditors, accompanied by a summary of the debtor's statement of affairs, including the causes of his failure, and any observations thereon which the official receiver may think fit to make; but the proceedings at the first meeting shall not be invalidated by reason of any such notice or summary not having been sent or received before the meeting. [Cf. Rs. 249, 250—253.]

4. The meeting shall be held at such place as is in the opinion of the official receiver most convenient for the majority of the creditors.

5. The official receiver or the trustee may at any time summon a meeting of creditors, and shall do so whenever directed by the Court, or so requested in writing by one-fourth in value of the creditors. [Cf. Rs. 15, 311, 319, and s. 89, *ante*, p. 153.]

6. Meetings subsequent to the first meeting shall be summoned by sending notice of the time and place thereof to each creditor at the address given in his proof, or if he has not proved, at the address given in the debtor's statement of affairs, or at such other address as may be known to the person summoning the meeting. [Cf. Rs. 249, 254, 311, 319.]

7. The official receiver, or some person nominated by him, shall be the chairman at the first meeting. The chairman at subsequent meetings shall be such person as the meeting by resolution may appoint.

8. A person shall not be entitled to vote as a creditor at the first or any other meeting of the creditors unless he has duly proved a debt provable in bankruptcy to be due to him from the debtor, and the proof has been duly lodged before the time appointed for the meeting. [Cf. Rs. 222, 222A, Sch. II., Rs. 219—231.] [Cf. s. 37.]

9. A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.

10. For the purpose of voting, a secured creditor shall, unless he surrender his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to

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him, after deducting the value of his security. If he votes in respect of his whole debt, he shall be deemed to have surrendered his security, unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence.

Note.—Inadvertence is not the same as mistake. A creditor who states in his proof that his security is worthless does not omit to value it. *In re Piers*, (1898) 1 Q. B. 627.

[Cf. Rs. 221, 233.]

11. A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the debtor, and against whom a receiving order has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

[Cf. Sch. II. (9—16).]

12. It shall be competent to the trustee or to the official receiver, within twenty-eight days after a proof estimating the value of a security as aforesaid has been made use of in voting at any meeting, to require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated, with an addition thereto of twenty per centum. Provided, that where a creditor has put a value on such security, he may, at any time before he has been required to give up such security as aforesaid, correct such valuation by a new proof, and deduct such new value from his debt, but in that case such addition of twenty per centum shall not be made if the trustee requires the security to be given up.

[Cf. s. 59, *ante*, p. 127.]

13. If a receiving order is made against one partner of a firm, any creditor to whom that partner is indebted jointly with the other partners of the firm, or any of them, may prove his debt for the purpose of voting at any meeting of creditors, and shall be entitled to vote thereat.

[Cf. Sch. II. (22 and 27).]

14. The chairman of a meeting shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether the proof of a creditor should be admitted or rejected, he shall mark the proof as objected to and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

15. A creditor may vote either in person or by proxy.

16. *Repealed: see end of this Schedule.*

17. A creditor may give a general proxy to his manager or clerk, or any other person in his regular employment. In such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor.

18. *Repealed: see end of this Schedule.*

[Cf. R. 245 (2).]

19. A proxy shall not be used unless it is deposited with the official receiver or trustee before the meeting at which it is to be used.

[Cf. ss. 72, 88, *ante*, and R. 26, *post.*]

20. Where it appears to the satisfaction of the Court that any solicitation has been used by or on behalf of a trustee or receiver in obtaining proxies, or in procuring the trusteeship or receivership, except by the direction of a meeting of creditors, the Court shall have power, if it think fit, to order that no remuneration shall be allowed to the person by whom or on whose behalf such solicitation may have been exercised, notwithstanding any resolution of the committee of inspection or of the creditors to the contrary.

[Cf. R. 327.]

21. A creditor may appoint the official receiver of the debtor's estate to act in manner prescribed as his general or special proxy.

22. The chairman of a meeting may, with the consent of the meeting, adjourn the meeting from time to time, and from place to place.

[Cf. R. 256.]

23. A meeting shall not be competent to act for any purpose except the election of a chairman, the proving of debts, and the adjournment

of the meeting, unless there are present, or represented thereat, at least three creditors, or all the creditors if their number does not exceed three.

24. If within half an hour from the time appointed for the meeting a quorum of creditors is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place, or to such other day as the chairman may appoint, not being less than seven or more than twenty-one days. [Cf. R. 257.]

25. The chairman of every meeting shall cause minutes of the proceedings at the meeting to be drawn up, and fairly entered in a book kept for that purpose, and the minutes shall be signed by him or by the chairman of the next ensuing meeting. [Cf. s. 133, *ante*, p. 10, and R. 255.]

26. No person acting either under a general or special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer, in a position to receive any remuneration out of the estate of the debtor otherwise than as a creditor rateably with the other creditors of the debtor. Provided that where any person holds special proxies to vote for the appointment of himself as trustee he may use the said proxies and vote accordingly. [Cf. s. 88, *ante*, p. 140, and Rs. 245—248.]

Rs. 16 and 18 of this schedule are repealed, and are replaced by the provisions of s. 22 of the B. A. 1890, as follows:—

Proxies. B. A. 1890, s. 22.

(1) Every instrument of proxy shall be in the prescribed form, and shall be issued by the official receiver of the debtor's estate, or by some other official receiver, or, after the appointment of a trustee, by the trustee, and every insertion therein shall be in the handwriting of the person giving the proxy, or of any manager or clerk, or other person in his regular employment, or of any commissioner to administer oaths in the Supreme Court.

(2) General and special forms of proxy shall be sent to the creditors, together with a notice summoning a meeting of creditors, and neither the name nor the description of the official receiver, or of any other person, shall be printed or inserted in the body of any instrument of proxy before it is so sent.

(3) A creditor may give a special proxy to any person to vote at any specified meeting or adjournment thereof on all or any of the following matters:

(*a*) For or against any specific proposal for a composition or scheme of arrangement:

(*b*) For or against the appointment of any specified person as trustee at a specified rate of remuneration, or as member of the committee of inspection, or for or against the continuance in office of any specified person as trustee or member of a committee of inspection:

(*c*) On all questions relating to any matter, other than those above referred to, arising at any specified meeting or adjournment thereof (B. A. 1890, s. 22).

THE SECOND SCHEDULE.

Proof of Debts.

[Cf. Rs. 215, 219, 231.]

Proof in Ordinary Cases.—1. Every creditor shall prove his debt as soon as may be after the receiving order.

2. A debt may be proved by delivering or sending through the post in a prepaid letter to the official receiver, or, if a trustee has been appointed, to the trustee, an affidavit verifying the debt.

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3. The affidavit may be made by the creditor himself, or by some person authorised by or on behalf of the creditor. If made by a person so authorised it shall state his authority and means of knowledge.

4. The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The official receiver or trustee may at any time call for the production of the vouchers.

[Cf. R. 219.]

5. The affidavit shall state whether the creditor is or is not a secured creditor.

[Cf. s. 105 (1).]

6. A creditor shall bear the cost of proving his debt unless the Court otherwise specially orders.

[Sch. I. (8) and R. 222.]

7. Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors before the first meeting, and at all reasonable times.

8. A creditor proving his debt shall deduct therefrom all trade discounts, but he shall not be compelled to deduct any discount, not exceeding five per centum on the net amount of his claim, which he may have agreed to allow for payment in cash.

Proof by Secured Creditors.—9. If a secured creditor realises his security, he may prove for the balance due to him, after deducting the net amount realised.

10. If a secured creditor surrenders his security to the official receiver or trustee for the general benefit of the creditors, he may prove for his whole debt.

[Cf. Sch. I. (10—12).]

11. If a secured creditor does not either realise or surrender his security, he shall, before ranking for dividend, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

[Cf. Sch. I. (12).]

12. (*a*) Where a security is so valued, the trustee may at any time redeem it on payment to the creditor of the assessed value.

[Cf. Rs. 73—77.]

(*b*) If the trustee is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be agreed on between the creditor and the trustee, or as, in default of such agreement, the Court may direct. If the sale be by public auction, the creditor, or the trustee on behalf of the estate, may bid or purchase.

(*c*) Provided that the creditor may at any time, by notice in writing, require the trustee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realised, and if the trustee does not, within six months after receiving the notice, signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it; and the equity of redemption, or any other interest in the property comprised in the security which is vested in the trustee, shall vest in the creditor, and the amount of his debt shall be reduced by the amount at which the security has been valued.

Note.—As to redemption, see *In re Vautin*, (1899) 2 Q. B. 549, *ante*, p. 26. Though in practice a proving creditor may be allowed to lump together debts and securities, yet if the debts are distinct in substance, with different rights over against third parties, or with different securities, the trustee may require the creditor to distinguish and specify the debts and the value of the securities (if any) for the same: *In re Morris*, (1899) 1 Ch. 485. This is so, though the securities are not on the debtor's estate: *Ib.*

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13. Where a creditor has so valued his security, he may at any time amend the valuation and proof on showing to the satisfaction of the trustee, or the Court, that the valuation and proof were made *bonâ fide* on a mistaken estimate, or that the security has diminished or increased in value since its previous valuation: but every such amendment shall be made at the cost of the creditor, and upon such terms as the Court shall order, unless the trustee shall allow the amendment without application to the Court.

Note.—If after the notice in R. 12, the trustee declares his election to purchase the security at the creditor's valuation, probably the creditor cannot subsequently amend his valuation: *Ex parte Norris, In re Sadler*, 17 Q. B. D. 728. The mere fact that the trustee has told the creditor (no notice to elect having been given by him) that he intends to purchase the security at the creditor's valuation, does not preclude amendment; but when once the trustee has purchased and paid for the security at the creditor's valuation, amendment is no longer possible: *Ib.* See note to Sch. I., R. 10.

14. Where a valuation has been amended in accordance with the foregoing rule, the creditor shall forthwith pay any surplus dividend which he may have received in excess of that to which he would have been entitled on the amended valuation, or, as the case may be, shall be entitled to be paid out of any money for the time being available for dividend any dividend or share of dividend which he may have failed to receive by reason of the inaccuracy of the original valuation, before that money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment.

15. If a creditor after having valued his security subsequently realises it, or if it is realised under the provisions of Rule 12, the net amount realised shall be substituted for the amount of any valuation previously made by the creditor, and shall be treated in all respects as an amended valuation made by the creditor.

16. If a secured creditor does not comply with the foregoing rules he shall be excluded from all share in any dividend.

17. Subject to the provisions of Rule 12, a creditor shall in no case receive more than twenty shillings in the pound, and interest as provided by this Act. [Cf. s. 40, *ante*, p. 116, and R. 20, *infra*.]

Proof in respect of Distinct Contracts.—18. If a debtor was at the date of the receiving order liable in respect of distinct contracts as a member of two or more distinct firms, or as a sole contractor and also as member of a firm, the circumstance that the firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of the contracts, against the properties respectively liable on the contracts. [Cf. p. 124.]

Periodical Payments.—19. When any rent or other payment falls due at stated periods, and the receiving order is made at any time other than one of those periods, the person entitled to the rent or payment may prove for a proportionate part thereof up to the date of the order, as if the rent or payment grew due from day to day. [Cf. s. 42.]

Interest.—20. On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the receiving order, and provable in bankruptcy, the creditor may prove for interest at a rate not exceeding four per centum per annum to the date of the order from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made [Cf. s. 40, *ante*, p. 116, and pp. 118, 120.]

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giving the debtor notice that interest will be claimed from the date of the demand until the time of payment.

Debt payable at a Future Time.—21. A creditor may prove for a debt not payable when the debtor committed an act of bankruptcy as if it were payable presently, and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of five pounds per centum per annum, computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted.

[Cf. Rs. 227—231.]

Admission or Rejection of Proofs.—22. The trustee shall examine every proof and the grounds of the debt, and in writing admit or reject it, in whole or in part, or require further evidence in support of it. If he rejects a proof, he shall state in writing to the creditor the grounds of the rejection.

[Cf. R. 6 (*g*).]

23. If the trustee thinks that a proof has been improperly admitted, the Court may, on the application of the trustee, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

[Cf. R. 230, and s. 90, *ante*, p. 154.]

24. If a creditor is dissatisfied with the decision of the trustee, in respect of a proof, the Court may, on the application of the creditor, reverse or vary the decision.

[Cf. s. 90, and R. 6 (*g*).]

25. The Court may also expunge or reduce a proof upon the application of a creditor if the trustee declines to interfere in the matter, or, in the case of a composition or scheme, upon the application of the debtor.

26. For the purpose of any of his duties in relation to proofs, the trustee may administer oaths and take affidavits.

[Cf. Rs. 223—231.]

27. The official receiver, before the appointment of a trustee, shall have all the powers of a trustee with respect to the examination, admission, and rejection of proofs, and any act or decision of his in relation thereto shall be subject to the like appeal.

THE THIRD SCHEDULE.

SECT. 96.

LIST OF METROPOLITAN COUNTY COURTS.

(See *ante*, p. 5.)

THE FOURTH SCHEDULE.

SECT. 162.

STATUTES RELATING TO UNCLAIMED DIVIDENDS.

Referred to in s. 162, *ante*, p. 129.

Session and Chapter.	Title of Act.
7 & 8 Vict. c. 70 . .	An Act for facilitating arrangements between debtors and creditors.
12 & 13 Vict. c. 106 .	The Bankruptcy Law Consolidation Act, 1849.
24 & 25 Vict. c. 134 .	The Bankruptcy Act, 1861.
32 & 33 Vict. c. 71 .	The Bankruptcy Act, 1869.

THE FIFTH SCHEDULE.

ENACTMENTS REPEALED AS TO ENGLAND. SECT. 169.

(See *ante*, p. 13.)

13 Edw. I. c. 18 in part.	The statutes of Westminster the Second, chapter eighteen, Execution either by levying of the lands and goods, or by delivery of goods and half the land; at the choice of the creditor; in part; namely, the words "all the chattels of the debtor, saving only his oxen and beasts of the plough, and"
32 & 33 Vict. c. 62 in part.	The Debtors Act, 1869, in part; namely, sub-section (b) of section five, and sections twenty-one and twenty-two.
32 & 33 Vict. c. 71	The Bankruptcy Act, 1869.
32 & 33 Vict. c. 83 in part.	The Bankruptcy Repeal and Insolvent Court Act, 1869, in part; namely, section nineteen.
33 & 34 Vict. c. 76	The Absconding Debtors Act, 1870.
34 & 35 Vict. c. 50	The Bankruptcy Disqualification Act, 1871, except sections six, seven, eight.
38 & 39 Vict. c. 77 in part.	The Supreme Court of Judicature Act, 1875, in part; namely, sections nine and thirty-two.

BANKRUPTCY RULES, 1886 AND 1890.

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[NOTE.—*The figures in the margin are added by the Author.*]

RULES 1—3.

Preliminary.

Short title and commencement.
S. 127.

1. These Rules (*a*) may be cited as "The Bankruptcy Rules, 1886" (*a*). They shall come into operation on the 25th day of October, 1886, and shall also, so far as practicable, and unless otherwise expressly provided, apply to all matters arising, and to all proceedings taken in any matters under the Act, on or after the said day.

Rs. 350—354. Repeal.

2. The Bankruptcy Rules, 1883, and all other subsequent Rules heretofore made under the Act, are hereby annulled: Provided that such annulment shall not affect anything done or suffered before the commencement of these Rules under any rule annulled by these Rules: and that no rule or practice repealed by the said Rules or any of them shall be revived by reason of the annulment effected by these Rules: Provided also that such annulment shall not in any way affect the Rules made under s. 122 of the Act.

Interpretation of terms.

3. In these Rules (*a*), unless the context or subject-matter otherwise requires,—

(*a*) "The Act" means the Bankruptcy Act, 1883.

R. 134.

"The Court" includes a registrar when exercising the powers of the Court pursuant to the Act or these Rules.

"Court of Appeal" includes any Court to which, under any Act for the time being in force, appeals lie from the Court as defined by the Bankruptcy Act, 1883, and these Rules.

"Creditor" includes a corporation, and a firm of creditors in partnership.

R. 60.

"Debtor" includes a firm of debtors in partnership, and includes any debtor proceeded against under the Act, whether adjudged bankrupt or not.

"Judge of the High Court" means the Judge to whom bankruptcy business is for the time being assigned, under s. 94 of the Act.

"Name" of a person means both the Christian name, or the initial letter or contraction of the Christian name, and the surname of such person.

S. 99.

"Registrar" means a registrar or deputy registrar of a County Court having jurisdiction in bankruptcy, or, as the case may be, a registrar in bankruptcy of the High Court.

(*a*) Some rules, made in 1890 (with accompanying Forms), partly in addition to and partly in substitution for Rules and Forms of 1886, came into operation on January 1st, 1891. Both sets of Rules are here printed as one (the new having, for convenience, been worked into the old), and are called the Bankruptcy Rules, 1886 and 1890. The Rules of 1890 contain the following three preliminary Rules:

Preliminary.

Commencement and application.

1. These Rules shall commence and come into operation on the 1st day of January, 1891, and shall, so far as practicable, apply to all matters arising, and to all proceedings taken in any matters under the Acts, on and after the said day.

Citation.

2. These Rules, and the Bankruptcy Rules, 1886, shall be read and construed as one set of Rules. These Rules may be cited as the Bankruptcy Rules, 1890, and they and the Bankruptcy Rules, 1886, may be together cited as the Bankruptcy Rules, 1886 and 1890.

Interpretation.

3. In these Rules—

"The Acts" means "The Bankruptcy Acts, 1883 and 1890," "The Bankruptcy Appeals (County Courts) Act, 1884," and "The Preferential Payments in Bankruptcy Act, 1888."

"The Act of 1883" means "The Bankruptcy Act, 1883."

"The Act of 1890" means "The Bankruptcy Act, 1890."

In the Bankruptcy Rules, 1886 and 1890, trustee includes any trustee appointed under a composition or scheme.

"Scheme" means a scheme of arrangement pursuant to the Act.
"Sealed" means sealed with the seal of the Court.
"Taxing officer" means and includes the officer of the Court whose duty is to tax costs in bankruptcy proceedings.
"Trustee" includes the trustee appointed under a composition or scheme of arrangement under which a trustee is appointed to administer a debtor's property, or manage his business; and also includes an official receiver when acting as trustee.
"Writing" includes print, and "written" includes printed.

(*b*) Words importing the plural number include the singular, and words importing the singular number include the plural, and words importing the masculine gender include the feminine.

(*c*) The provisions of s. 168 of the Act shall apply to these Rules, and any other terms or expressions defined by the Act shall, in these Rules, have the meanings thereby assigned to them.

Computation of time.

4.—(1) The provisions of s. 141 of the Act shall apply to these Rules.

(2) Where by the Act or these Rules the time limited for doing any act or thing is less than six days, Sunday, Christmas Day, Good Friday, the Saturday next after Good Friday, Monday and Tuesday in Easter week, and any other day on which the offices of the Court are wholly closed, shall be excluded in computing such time.

(3) For the purposes of these Rules and of s. 141 of the Act "a day on which the Court does not sit" shall mean a day on which the offices of the Court are closed.

Forms.

Use of Forms in Appendix. S. 168.

5.—(1) The forms in the Appendix, where applicable, and where they are not applicable forms of the like character, with such variations as circumstances may require, shall be used. Where such forms are applicable any costs occasioned by the use of any other or more prolix forms shall be borne by or disallowed to the party using the same, unless the Court shall otherwise direct.

(2) Provided that the Board of Trade may from time to time alter any forms which relate to matters of an administrative, and not of a judicial character, or substitute new forms in lieu thereof. Where the Board of Trade alters any form, or substitutes any new form in lieu of a form prescribed by these Rules, such altered or substituted form shall be published in the *London Gazette*.

PART I.

COURT PROCEDURE.

Court and Chambers.

Matters to be heard in Court. S. 98. R. 9.

6. The following matters and applications shall be heard and determined in open Court, namely:—

(*a*) The public examination of debtors;

(*b*) Applications to approve a composition or scheme of arrangement;

(*c*) Applications for orders of discharge or certificates of removal of disqualifications; See *post*, pp. 274, 275.

(*d*) Appeals from the Board of Trade to the High Court;

RULES 6—14.

(*e*) Applications to set aside or avoid any settlement, conveyance, transfer, security, or payment, or to declare for or against the title of the trustee to any property adversely claimed;

(*f*) Applications for the committal of any person to prison for contempt;

(*g*) Appeals against the rejection of a proof, or applications to expunge or reduce a proof, where the amount in dispute exceeds £200.

(*h*) Applications for the trial of issues of fact with a jury, and the trial of such issues.

Any other matter or application may be heard and determined in chambers.

Jurisdiction of registrars.

Rs. 8, 354.

7. A registrar may, under the general or special directions of the Judge, hear and determine any matter or application mentioned in sub-s. (2) of s. 99 of the Act.

See *post*, p. 274.

Adjournment from registrar to Judge.

8. Any matter or application pending before a registrar which under the Bankruptcy Act, 1883, or the Bankruptcy Rules for the time being in force under that Act, a registrar has jurisdiction to determine shall be adjourned to be heard before the Judge if the Judge shall, either specially or by any general direction applicable to the particular case, so direct.

Adjournment from chambers to Court and *vice versâ*.

See *post*, p. 274.

9. Subject to the provisions of the Act and these Rules, any matter or application may, at any time, if the Judge (or, as the case may be, the registrar) thinks fit, be adjourned from chambers to Court or from Court to chambers; and if all the contending parties require any matter or application to be adjourned from chambers into Court it shall be so adjourned.

Proceedings.

Proceedings, how intituled.

S. 94 (5).

10.—(1) Every proceeding in Court under the Act shall be dated, and shall be intituled "In Bankruptcy," with the name of the Court in which it is taken, and of the matter to which it relates. Numbers and dates may be denoted by figures.

(2) All applications and orders shall be intituled *ex parte* the applicant.

(3) The first proceeding in every matter shall have a distinctive number assigned to it by the registrar, and all subsequent proceedings in the same matter shall bear the same number.

(4) The Forms Nos. 1 and 2 in the Appendix shall be used, with such variations or additions as circumstances may require.

Written or printed proceedings.

11. All proceedings in Court shall be written or printed, or partly written and partly printed, on paper of the size hitherto used in bankruptcy, that is to say, on sheets of sixteen inches in length and ten inches in breadth, or thereabouts; but no objections shall be allowed to any proof, affidavit, or proxy on account of its being written or printed on paper of other size.

Records of the Court.

12. All proceedings of the Court shall remain of record in the Court, so as to form a complete record of each matter, and they shall not be removed for any purpose, except for the use of the officers of the Court, or by special direction of the Judge or registrar, but they may at all reasonable times be inspected by the trustee, the debtor, and any creditor who has proved, or any person on behalf of the trustee, debtor, or any such creditor.

Notices to be in writing.

S. 142.

R. 92.

13. All notices required by the Act or these Rules shall be in writing, unless these Rules otherwise provide, or the Court shall in any particular case otherwise order.

Process to be sealed.

14. All summonses, petitions, notices, orders, warrants, and other process issued by the Court shall be sealed.

15. Where the Court orders a general meeting of creditors to be summoned under Rule 5 of Schedule I. to the Act, it shall be summoned as the Court directs, and in default of any direction by the Court the registrar shall transmit a sealed copy of the order to the trustee (or, as the case may be, the official receiver); and the trustee or official receiver shall, not less than seven days before such meeting, send a copy of the order to each creditor at the address given in his proof, or when he shall not have proved, the address given in the list of creditors by the debtor, or such other address as may be known to the trustee or official receiver.

S. 137. Meetings summoned by Court.

16. All office copies of petitions, proceedings, affidavits, books, papers, and writings, or any parts thereof required by any trustee, or by any debtor, or by any creditor, or by the solicitor of any such trustee, debtor, or creditor, shall be provided in the High Court by the senior bankruptcy registrar and in a County Court by the registrar; and shall, except as to figures, be fairly written at length, and be sealed and delivered out without any unnecessary delay, and in the order in which they shall have been bespoken.

Office copies.

17.—(1) In the High Court the senior bankruptcy registrar, and in a County Court the registrar, shall file a copy of each issue of the *London Gazette*, and whenever the gazette contains any advertisement relating to any matter under the Act in such Court he shall at the same time file with the proceedings in the matter a memorandum referring to and giving the date of such advertisement.

Filing, gazetting, &c. S. 132. Rs. 280—281.

(2) In the case of an advertisement in a local paper, the registrar shall in like manner file a copy of the paper and a memorandum (which shall be in the Form No. 175 in the Appendix) referring to and giving the date of such advertisement.

(3) For this purpose one copy of each local paper, in which any advertisement relating to any matter under the Act in such Court is inserted, shall be left with the registrar by the person inserting the advertisement.

(4) The memorandum by the registrar shall be *primâ facie* evidence that the advertisement to which it refers was duly inserted in the issue of the gazette or paper mentioned in it.

17A. Where in the exercise of their functions under the Acts or Rules the Board of Trade or the official receiver requires to inspect or use the file of proceedings in any matter, the registrar shall (unless the file is at the time required for use in Court or by him) on request transmit the file of proceedings to the Board of Trade or official receiver, as the case may be.

Use of file by Board of Trade or official receiver.

18. The Judge of the High Court may at any time, for good cause shown, order the proceedings in any matter under the Act to be transferred from a County Court to the High Court, or from the High Court to a County Court.

Transfer by Judge of High Court. S. 97 (2, 3). S. 102 (4). Rs. 259, 260.

19. The Judge of any County Court having jurisdiction in bankruptcy, may, at any time, for good cause shown, order the proceedings in any matter under the Act, which have been commenced or are pending in his Court, to be transferred to any other County Court.

Transfer by Judge of County Court.

20. When an order of transfer has been made by any Court, the registrar shall send by post a sealed copy of the order of transfer to the Court affected by the order.

Transmission of order of transfer.

21. Where the proceedings in any matter are transferred by any Court, the official receiver of the Court to which such proceedings are transferred shall become the official receiver of the debtor's estate in place of the official receiver of the Court from which the proceedings are transferred.

Transfer of official receiver's duties.

22. An order of transfer shall be in the Form No. 22 in the Appendix, with such variations as circumstances may require.

Form of order.

RULES 23—31.

Transmission of records.

23. Where the proceedings in any matter are transferred from a Court to any other Court, the registrar of the first Court shall send by post the records of proceedings transferred to the registrar of the Court to which the transfer is made.

Notice of transfer to official receiver and Board of Trade.

24. The registrar of the Court to which proceedings are transferred shall give notice of the transfer in the Form No. 23 in the Appendix to the official receiver of the same Court, and to the Board of Trade, as soon as he shall receive the records of proceedings from the registrar of the Court from which the transfer is made. When a matter is transferred from one Court to another, it shall receive a new distinctive number.

Proceedings commenced in wrong Court.

25. When any bankruptcy proceeding has been commenced in a Court in which it should not have been commenced, the Judge of that Court or the Judge of the High Court may order that the proceeding shall be transferred to the Court in which the same should have been commenced, or that it be continued in the Court in which it was commenced; but unless and until a transfer is made under these Rules, the proceeding shall continue in the Court in which it was commenced.

Transfer of jurisdiction of County Court and pending business.

26. Whenever the Lord Chancellor, by order under his hand, shall exclude any County Court from having jurisdiction in bankruptcy, or shall attach the district or any part of the district of a County Court to the High Court, or any other County Court, or shall detach the district or any part of the district of any County Court from the district and jurisdiction of the High Court, any bankruptcy business pending in the Court or district to which the order relates shall become transferred to such Court as shall be mentioned for the purpose in the order; and, thereupon, the rules as to transfer of proceedings shall apply to the transfer of such pending proceedings in all respects as if the proceedings had been transferred by order of a Court having power to transfer proceedings.

Motions and Practice.

Applications to be by motion.

S. 105 (5).

27. Every application to the Court (unless otherwise provided by these Rules, or the Court shall in any particular case otherwise direct) shall be made by motion supported by affidavit.

Notice of motion and *ex parte* applications.

28. Where any party, other than the applicant, is affected by the motion, no order shall be made, unless upon the consent of such party duly shown to the Court, or upon proof that notice of the intended motion and a copy of the affidavits in support thereof have been duly served upon such party: Provided that the Court, if satisfied that the delay caused by proceeding in the ordinary way would or might entail serious mischief, may make any order *ex parte* upon such terms as to costs and otherwise, and subject to such undertaking, if any, as the Court may think just; and any party affected by such order may move to set it aside.

Length of notice.

29. Unless the Court gives leave to the contrary, notice of motion shall be served on any party to be affected thereby not less than eight days before the day named in the notice for hearing the motion. An application for leave to serve short notice of motion shall be made *ex parte*.

Affidavits against motion.

30. Where a respondent intends to use affidavits in opposition to a motion he shall deliver copies of such affidavits to the applicant not less than two days before the day appointed for the hearing.

Notice not served on all proper parties.

31. If on the hearing of any motion or application the Court shall be of opinion that any person to whom notice has not been given ought to have, or to have had, such notice, the Court may either dismiss the motion or application, or adjourn the hearing thereof, in order

RULES 31—40.

that such notice may be given, upon such terms as the Court shall think fit.

32. The hearing of any motion or application may from time to time be adjourned, upon such terms (if any) as the Court shall think fit. R. 32. Adjournment.

33. In cases in which personal service of any notice of motion, or of any order of the Court, is required, the same shall be effected, in the case of a notice of motion, by delivering to each party to be served a copy of the notice of motion; and, in the case of an order, by delivering to each party to be served a sealed copy of the order. S. 105 (2). R. 31. Personal service.

34. Every affidavit to be used in supporting or opposing any opposed motion shall be filed with the registrar not later than the day before the day appointed for the hearing. Rs. 31, 62, 141, 153—156. Filing affidavits on motion.

35. The registrar, upon any affidavit being left with him to be filed, shall indorse the same with the day of the month and the year when the same was so left, and forthwith file the same with the proceedings to which the same relates, and any affidavit left with a registrar to be filed shall on no account be delivered out to any person, except by order of the Court. R. 57. Indorsement and filing of affidavits.

36. A party intending to move shall, previous to the public sitting of the Court, deliver to the registrar or clerk of the Court a copy of his notice of motion. There shall be indorsed on such copy the name of the applicant's solicitor and counsel (if any), and also (if known) the name of the respondent's solicitor and counsel (if any). Notice of motion to be filed.

37. Except in cases of emergency, or for any other cause deemed sufficient by the Court, all motions shall be made and heard in the order in which they are set down at the sitting of the Court. Precedence of motions. S. 151.

Preparation of Orders.

37A. If within one week of the making of an order of adjudication, order annulling adjudication, order on application to approve a composition or scheme, order annulling a composition or scheme, or order on application for discharge, such order has not been completed, it shall be the duty of the registrar to prepare and complete such order; provided that if in any case the Judge shall be of opinion that the provisions of this Rule ought not to apply, he may so order; and provided also that where an order of discharge is granted subject to the condition that judgment shall be entered against the bankrupt, nothing in this Rule shall require the registrar to prepare and complete the order until the bankrupt has given consent, in the prescribed form, to judgment being entered against him. Preparation of orders.

37B. A person who has the carriage of an order shall obtain from the registrar an appointment to settle the order, and shall give reasonable notice of the appointment to all persons who may be affected by the order, or to their solicitors. Notice of appointment to settle order.

Security in Court.

38. Except where these Rules otherwise provide, where a person is required to give security, such security shall be in the form of a bond with one or more surety or sureties to the person proposed to be secured. Ss. 4 (1*g*), 7 (5), R. 148. Security by bond.

39. The bond shall be taken in a penal sum, which shall be not less than the sum for which security is to be given, and probable costs, unless the opposite party consent to it being taken for a less sum. S. 12 (2). S. 21 (2). Amount of bond.

40. Where a person is required to give security he may, in lieu thereof, lodge in Court a sum equal to the sum in question in respect Deposit in lieu of bond.

RULES 40—52.

of which security is to be given, and the probable costs of the trial of the question, together with a memorandum to be approved of by the registrar and to be signed by such person, his solicitor, or agent, setting forth the conditions on which the money is deposited.

Money lodged in Court.

41. The rules for the time being in force in the High Court and County Courts respectively relating to payment into and out of Court of money lodged in Court by way of security for costs shall apply to money lodged in Court under these rules.

Security of guarantee society.

42. The security of a guarantee association or society approved by the Court or the opposite party may be given in lieu of a bond or a deposit.

Notice of sureties.

43. In all cases where a person proposes to give a bond by way of security, he shall serve, by post or otherwise, on the opposite party and on the registrar, at the Court, notice of the proposed sureties, which shall be in the Form No. 20 in the Appendix, and the registrar shall forthwith give notice to both parties of the time and place at which he proposes that the bond shall be executed, and shall state in the notice that, should the proposed obligee have any valid objection to make to the sureties, or either of them, it must be made at that time.

Justification by sureties.

44. The sureties shall make an affidavit of their sufficiency (which shall be in the Form No. 21 in the Appendix), unless the opposite party shall dispense with such affidavit, and such sureties shall attend the Court to be cross-examined, if required.

Execution of bond.

45. The bond shall be executed and attested in the presence of the registrar or the official receiver, or before a justice of the peace, or a solicitor.

Notice of deposit. S. 135.

46. Where a person makes a deposit of money in lieu of giving a bond, the registrar shall forthwith give notice to the person to whom the security is to be given of such deposit having been made.

Affidavits.

Costs of unnecessary matter.

47. The costs of every affidavit which shall unnecessarily set forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same.

48. Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be shall be confined to a distinct portion of the subject. No costs shall be allowed for any affidavit or part of an affidavit substantially departing from this Rule.

Deponent's description.

49. Every affidavit shall state the description and true place of abode of the deponent.

Several deponents.

50. In every affidavit made by two or more deponents the names of the several persons making the affidavit shall be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer it shall be sufficient to state that it was sworn by both (or all) of the "above-named" deponents.

Scandalous matter.

51. The Court may order to be struck out from any affidavit any matter which is scandalous, and may order the costs of any application to strike out such matter to be paid as between solicitor and client.

Erasures, &c.

52. No affidavit having in the jurat or body thereof any interlineation, alteration, or erasure shall, without leave of the Court, be read or made use of in any matter depending in Court unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the officer or person taking the affidavit, nor, in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are re-written and

signed or initialled in the margin of the affidavit by the officer or person taking it.

Blind or illiterate persons.

53. Where an affidavit is sworn by any person who appears to the person taking the affidavit to be illiterate or blind, the person taking the affidavit shall certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his signature in the presence of such person. No such affidavit shall be used in evidence in the absence of this certificate, unless the Court is otherwise satisfied that the affidavit was read over to and appeared to be perfectly understood by the deponent.

Formal defects.
S. 143.
R. 350.

54. The Court may receive any affidavit sworn for the purpose of being used in any matter notwithstanding any defect by mis-description of parties or otherwise in the title or jurat, or any other irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received.

Filing office copies, &c.

55.—(1) In cases in which by the present practice an original affidavit is allowed to be used, it shall, before it is used, be stamped with a proper filing stamp, and shall at the time when it is used be delivered to and left in Court or in chambers with the proper officer, who shall send it to be filed.

(2) An office copy of an affidavit may in all cases be used, the original affidavit having been previously filed and the copy duly authenticated with the seal of the Court.

Swearing of affidavit.
S. 135.

56.—(1) No affidavit (other than a proof of debt) shall be sufficient if sworn before the solicitor acting for the party on whose behalf the affidavit is to be used, or before any agent of such solicitor, or before the party himself.

(2) Any affidavit which would be insufficient if sworn before the solicitor himself shall be insufficient if sworn before his clerk or partner.

(3) An affidavit may be sworn to either in print or in manuscript, or partly in print and partly in manuscript.

Time for filing.
R. 34.

57.—(1) Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used, unless by leave of the Court.

(2) Except by leave of the Court no order made *ex parte* in Court founded on any affidavit shall be of any force unless the affidavit on which the application was made was actually made before the order was applied for, and produced or filed at the time of making the motion.

Proof of affidavit.
S. 135.

58. The Court shall take judicial notice of the seal or signature of any person authorised by or under the Act to take affidavits or to certify to such authority.

Stamps.

Defacement of Stamp.
S. 144.

59. Every officer of a Court who shall receive any document to which an adhesive stamp shall be affixed, shall immediately upon the receipt of such document deface the stamp thereon in the High Court by perforation or in such manner as the Commissioners of Inland Revenue may from time to time direct, and in a County Court by writing partly on the stamp and partly on the document the name of the debtor or in such other manner as the Commissioners of Inland Revenue may from time to time direct; and no such document shall be filed or delivered until the stamp thereon shall have been defaced in manner aforesaid, and it shall be the duty of the party presenting or receiving such document to see that such defacement has been duly made.

Application of section 144.
S. 94 (5).
R. 3.

60. For the purposes of section 144 of the Act, "bankruptcy" shall include any proceeding under the Act whether before or after adjudication, and whether an adjudication is made or not, and "bankrupt" shall include any debtor proceeded against under the Act.

RULES 61—71.

Witnesses and Depositions.

Ss. 27, 105 (5), 126.

Subpœna.

61. A subpœna for the attendance of a witness shall be issued by the Court at the instance of an official receiver, a trustee, a creditor, a debtor, or any applicant or respondent in any matter, with or without a clause requiring the production of books, deeds, papers, documents, and writings in his possession or control, and in such subpœna the name of three witnesses may be inserted.

Service of subpœna.

62. A sealed copy of the subpœna shall be served personally on the witness by the person at whose instance the same is issued, or by his solicitor, or by any officer of the Court, or by some person in their employ within a reasonable time before the time of the return thereof.

Proof of service.

63. Service of the subpœna may, where required, be proved by affidavit.

Limit of witnesses' costs.

64. The Court may in any matter limit the number of witnesses to be allowed on taxation of costs, and their allowance for attendance shall in no case exceed the highest rate of the allowances mentioned in the scale of costs.

Costs of witness.

65. The costs of witnesses, whether they have been examined or not, may, in the discretion of the Court, be allowed.

Depositions, &c.

66. The Court may, in any matter where it shall appear necessary for the purposes of justice, make an order for the examination upon oath before the Court or any officer of the Court, or any other person, and at any place, of any witness or person, and may empower any party to any such matter, to give such deposition in evidence therein on such terms (if any) as the Court may direct.

Shorthand notes, &c.

67. If the Court shall in any case, and at any stage in the proceedings, be of opinion that it would be desirable that a person (other than the person before whom the examination is taken) should be appointed to take down the evidence of the debtor, or of any witness examined at any public sitting or private meeting under the Act, in shorthand or otherwise, it shall be competent for the Court to make such appointment; and every person so appointed shall be paid a sum not exceeding one guinea a day, and where the Court appoints a shorthand writer a sum not exceeding 8*d*. per folio of 90 words for any transcript of the evidence that may be required, and such sums shall be paid by the party at whose instance the appointment was made, or out of the estate, as may be directed by the Court.

Shorthand writers.

R. 125A.

67A. Where the official receiver applies for the appointment of a person to take down in shorthand the evidence of a debtor on his public examination, he shall, unless there is a shorthand writer officially attached to the Court, or in the High Court nominated by the Judge of the High Court for that purpose, nominate a person for the purpose, and the person so nominated shall be appointed, unless the Court shall otherwise order.

Form of commission.

68. An order for a commission or letter of request to examine witnesses, and the writ of commission or request, shall follow the forms for the time being in use in the High Court, with such variations as circumstances may require.

Production of document.

S. 27.

Rs. 78, 349.

69. The Court may, in any matter, at any stage of the proceedings, order the attendance of any person for the purpose of producing any writings or other documents named in the order, which the Court may think fit to be produced.

Disobedience to order.

70. Any person wilfully disobeying any subpœna or order requiring his attendance for the purpose of being examined, or producing any document shall be deemed guilty of contempt of Court, and may be dealt with accordingly.

Conduct money.

S. 27 (2).

71. Any witness (other than the debtor) required to attend for the purpose of being examined, or of producing any document, shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial in Court.

Discovery.

Discovery. S. 105 (5).

72. Any party to any proceeding in Court may, with the leave of the Court, administer interrogatories to, or obtain discovery of documents from, any other party to such proceeding. Proceedings under this Rule shall be regulated as nearly as may be by the Rules of the Supreme Court for the time being in force in relation to discovery and inspection. An application for leave under this Rule may be made *ex parte*.

Taking Accounts of Property Mortgaged, and of the Sale thereof.

Inquiry into mortgage, &c.

73. Upon application by motion by any person claiming to be a mortgagee of any part of the bankrupt's real or leasehold estate, and whether such mortgage shall be by deed or otherwise, and whether the same shall be of a legal or equitable nature, the Court shall proceed to inquire whether such person is such mortgagee, and for what consideration and under what circumstances; and if it shall be found that such person is such mortgagee, and if no sufficient objection shall appear to the title of such person to the sum claimed by him under such mortgage, the Court shall direct such accounts and inquiries to be taken as may be necessary for ascertaining the principal, interest, and costs due upon such mortgage and of the rents and profits, or dividends, interest, or other proceeds received by such person, or by any other person by his order or for his use in case he shall have been in possession of the property over which the mortgage shall extend, or any part thereof, and the Court, if satisfied that there ought to be a sale, shall direct notice to be given in such newspapers as the Court shall think fit, when and where, and by whom, and in what way the said premises or property, or the interest therein so mortgaged, are to be sold, and that such sale be made accordingly, and that the trustee (unless it be otherwise ordered) shall have the conduct of such sale; but it shall not be imperative on any such mortgagee to make such application. At any such sale the mortgagee may bid and purchase.

Conveyance.

74. All proper parties shall join in the conveyance to the purchaser, as the Court shall direct.

Proceeds of sale.

75. The moneys to arise from such sale shall be applied in the first place in payment of the costs, charges, and expenses of the trustee, of and occasioned by the application to the Court, and of such sale and attendance thereat, and in the next place in payment and satisfaction, so far as the same shall extend, of what shall be found due to such mortgagee, for principal, interest, and costs, and the surplus of the said moneys (if any) shall then be paid to the trustee. But in case the moneys to arise from such sale shall be insufficient to pay and satisfy what shall be so found due to such mortgagee, then he shall be entitled to prove as a creditor for such deficiency, and receive dividends thereon rateably with the other creditors, but so as not to disturb any dividend then already declared.

Proceedings on inquiry. Ss. 27, 105 (5). Rs. 66, 69, 72, 78, 349.

76. For the better taking of such inquiries and accounts, and making a title to the purchaser, all parties may be examined by the Court upon interrogatories or otherwise as the Court shall think fit, and shall produce before the Court upon oath all deeds, papers, books, and writings, in their respective custody or power relating to the estate or effects of the bankrupt, as the Court shall direct.

Accounts, &c.

77. In any proceedings between a mortgagor and mortgagee, or the trustee of either of them, the Court may order all such inquiries and accounts to be taken in like manner as in the Chancery Division of the High Court.

RULES 78—86.

Discovery of Debtor's Property.

Applications for discovery. S. 27.

78. Every application to the Court under section 27 of the Act shall be in writing, and shall state shortly the grounds upon which the application is made. Where the application is made on behalf of the trustee, official receiver, or Board of Trade, it need not be verified by affidavit.

S. 53.

Appropriation of Pay, Salary, Pensions, &c.

Notice to bankrupt of application.

79. When a trustee intends to apply to the Court for an appropriation order under s. 53 of the Act, he shall give to the bankrupt notice of his intention so to do. Such notice shall specify the time and place fixed for hearing the application, and shall state that the bankrupt is at liberty to show cause against such order being made. The notice shall be in the Form No. 133 in the Appendix, with such variations as circumstances may require.

Notice to chief of department.

80. When the application is made under sub-s. (1) of s. 53 of the Act, a copy of the proposed order shall be sent by the registrar to the chief officer of the department under which the pay or salary is enjoyed, and the application shall stand adjourned until the written consent of such chief officer is obtained as required by the Act.

Copy of order to department.

81. Where an order is made under sub-s. (2) of s. 53 of the Act, the registrar shall give to the trustee a sealed copy of the order, who shall communicate the same to the chief of the department or other person under whom the pay, half-pay, salary, income, emolument, pension, or compensation is enjoyed.

Review of order.

82. Where an order has been made for the payment by a bankrupt or by his employer for the time being, of a portion of his income or salary, the bankrupt may, upon his ceasing to receive a salary or income of the amount he received when the order was made, apply to the Court to rescind the order, or to reduce the amount ordered to be paid by him to the trustee.

Warrants, Arrests, and Commitments.

To whom warrants addressed. S. 51. S. 119.

83. A warrant of seizure, or a search warrant, or any warrant issued under the provisions of the Act, shall be addressed to such officer of the High Court, or to such high bailiff or officer of any County Court, whether such County Court has jurisdiction in bankruptcy or not, as the Court may in each case direct.

Custody and production of debtor.

84. Where a debtor is arrested under a warrant issued under s. 25 of the Act, he shall be given into the custody of the governor or keeper of the prison, mentioned in the warrant, who shall produce such debtor before the Court as it may from time to time direct, and shall safely keep him until such time as the Court shall otherwise order; and any books, papers, moneys, goods and chattels in the possession of the debtor, which may be seized, shall forthwith be lodged with the official receiver or trustee, as the case may be.

Applications to commit. Ss. 3 (14), (1890), 24 (4), 102 (5).

85. An application to the Court to commit any person for contempt of Court shall be supported by affidavit, and be filed in the Court in which the proceedings are.

Notice and hearing of application.

86. Subject to the provisions of the Act and Rules, upon the filing of an application to commit, the registrar shall fix a time and place for the Court to hear the application, notice whereof shall be personally served on the person sought to be committed, not less than three days before the day fixed for the hearing of the application. Provided that in any case in which the Court may think fit, the Court may allow substituted service of the notice by advertisement or otherwise, or shorten the length of notice to be given.

87. Where an order of committal is made against a debtor, or against a trustee, for disobeying the order of the Court, or of the Board of Trade, or of the official receiver, to do some particular act or thing, the Court may direct that the order of committal shall not be issued, provided that the debtor or trustee, as the case may be, complies with the previous order within a specified time.

Suspension of issue of committal order.

88.—(1) If a debtor or witness examined before a registrar refuses to answer to the satisfaction of the registrar any question which he may allow to be put, the registrar shall report such refusal in a summary way to the Judge, and, upon such report being made, the debtor or witness in default shall be in the same position and be dealt with in the same manner as if he had made default in answering before the Judge.

Committal of contumacious debtor or witness.

(2) The report of the registrar shall be in writing, but without affidavit, and shall set forth the question put, and the answer (if any) given by the debtor or witness.

(3) The registrar shall, before the conclusion of the examination at which the default in answering is made, name the time when and the place where the default will be reported to the Judge; and upon receiving the report the Judge may take such action thereon as he shall think fit. If the Judge is sitting at the time when the default in answering is made, such default may be reported immediately.

(4) The report of the registrar may be in the form No. 35 in the Appendix.

Service and Execution of Process.

89. Every solicitor suing out or serving any petition, notice, summons, order, or other document, shall endorse thereon his name or firm and place of business, which shall be called his address for service, provided that in proceedings in the High Court, where his place of business is not within three miles of the principal entrance of the Royal Courts of Justice, he shall add to his own name or firm and place of business another proper place, which shall not be more than three miles from the principal entrance of the Royal Courts of Justice, which shall be his address for service. All notices, orders, documents, and other written communications which do not require personal service shall be deemed to be sufficiently served on such solicitor if left for him at his address for service.

Address of solicitor for service.

90. Service of notices, orders, or other proceedings shall be effected before the hour of six in the afternoon, except on Saturdays, when it shall be effected before the hour of two in the afternoon. Service effected after six in the afternoon on any week day, except Saturday, shall for the purpose of computing any period of time subsequent to such service, be deemed to have been effected on the following day. Service effected after two in the afternoon on Saturday shall for the like purpose be deemed to have been effected on the following Monday.

Hours for service.

91. It shall be the duty of the high bailiff of a County Court and, in the case of the High Court, of such officers or officer as the Court may direct, to serve such orders, summonses, petitions, and notices as the Court may require him to serve; to execute warrants and other process; to attend any sittings of the Court (but not sittings in chambers); and to do and perform all such things as may be required of him by the Court.

Duties of bailiff, &c.

But this rule shall not be construed to require any order, summons, petition, or notice to be served by a bailiff or officer of the Court which is not specially by the Act or Rules required to be so served, unless the Court shall in any particular proceeding by order specially so direct.

RULES 92—101.

92. Where notice of an order or other proceeding in Court may be served by post it shall be sent by registered letter.

Service by post.

S. 142.

93. Every order of the Court may be enforced as if it were a judgment of the Court to the same effect.

Enforcement of orders.

S. 100.

S. 102.

Trial by Jury.

94. Where upon any application to the Court for a decision on any question, the Court, with or without the application of any person, shall have directed that a question of fact be tried with a jury, such question of fact shall be reduced into writing and submitted to the Court for its approval, and shall, when approved, be called the record for trial; but the Court shall have power to allow any amendment thereof at any time upon such terms as the Court may think fit.

Settlement of issues for trial.

95. An order of the High Court for the trial of a question of fact before a jury shall specify the place of trial, and whether it shall be before a special or a common jury, but the order may be amended by the substitution of one jury for the other, upon such terms as the Court may think fit.

Special or common jury.

96. The issues of fact approved by the Court shall be tried, in a County Court according to the Rules for the time being in force in relation to jury trials in County Courts, and in the High Court in the same manner as issues of fact are tried in the Queen's Bench Division. Such issues may be tried either before the Judge of the High Court, or otherwise as the Court may direct.

Mode of trial.

R. 101.

97. Where such issues are ordered to be tried in the Queen's Bench Division otherwise than before the Judge of the High Court, they shall be tried as if they were issues of fact sent down by a Judge of the Chancery Division for trial in the Queen's Bench Division, and the verdict or finding of the jury shall be indorsed by the proper officer on the record for trial, and returned by him to the senior bankruptcy registrar of the High Court.

Trial of issues of fact in the Queen's Bench Division.

S. 92.

Sittings of County Court.

98. Subject to the orders of the Lord Chancellor, the place of sitting of each County Court having bankruptcy jurisdiction shall, for the purpose of such jurisdiction, be the town in which the Court now holds or may hereafter hold its sittings for the general business of the Court, under the provisions of the County Courts Acts.

Place.

99. Subject to the provisions of s. 92 of the Act, and until any such order as is therein mentioned be made by the Lord Chancellor, the times of the sitting of each County Court in matters of bankruptcy shall be those appointed for the transaction of the general business of the Court, unless the Judge of any such Court shall otherwise order. The appointment of a special day or days for a sitting of the Court in bankruptcy shall not prevent the Court from hearing and determining any bankruptcy matter on any day appointed for the general business of the Court when it may seem expedient so to do.

Times.

Cf. pp. 272—276.

Rules relating to the Business of the High Court.

100. The Judge of the High Court, with the approval of the Lord Chancellor, shall regulate the bankruptcy sittings and vacations of the High Court.

Sittings.

S. 94.

101. When a trustee, under s. 57 of the Act, brings an action in the High Court concerning any matter not specially assigned by the Supreme Court of Judicature Act, 1873, or Acts amending it, or by

Actions by trustees assigned to

the Rules of the Supreme Court, to a division other than that to which bankruptcy business is for the time being assigned, he shall bring such action in the division to which bankruptcy business is assigned, and the action shall, unless the High Court otherwise directs, be tried by the Judge of the High Court.

bankruptcy judge.
Ss. 83, 102 (4).
Rs. 6, 96.

102. Any registrar in bankruptcy of the High Court may act for any other registrar in any bankruptcy matter pending in the said Court; and any such registrar in bankruptcy may also act for the senior registrar in any matter in relation to his separate office.

Registrars to act for each other.

103. The office of the senior bankruptcy registrar of the High Court shall be kept open daily, throughout the year, from ten till four o'clock, except on Sunday, Christmas Day, Good Friday, the Saturday after Good Friday, Monday and Tuesday in Easter week, or any day appointed for a public fast or thanksgiving, or on which the Judge of the High Court may direct it to be closed, and except also on Saturdays, when the office may be closed at two o'clock. Provided that during vacations of the High Court the office may be closed at two o'clock.

Senior registrar's office.
R. 105.

104. The bills to be taxed by the bankruptcy taxing-masters shall be all such bills of costs, charges, fees, and disbursements, in matters under the Act as heretofore have been taxed by the said masters, and all other taxable bills in other matters in which the High Court may exercise bankruptcy jurisdiction, and such taxable bills as may be specially referred to them for taxation by any County Court, subject to the revision of the Court.

What bills taxing-masters shall tax.
S. 72 (4).
S. 73 (3).
R. 110, &c.

105. The office of the bankruptcy taxing-masters shall be open for the transaction of business throughout the year, except on such days as the office of the senior registrar shall be closed. The office shall be open from ten till four, except on Saturdays, and during vacations of the High Court, when the office may be closed at two o'clock.

Office hours of taxing-master.
R. 103.

106. The business of the bankruptcy taxing-masters shall be transacted by them in person.

Taxing-master's business.

107. Writs of execution shall issue from the proper department of the Central Office, and all proceedings thereon and in relation thereto shall be regulated as nearly as may be by the Rules of the Supreme Court for the time being in force in relation to execution.

Execution on orders.
R. 93.
Ss. 73, 105 (1).

Costs.

108.—(1) The Court in awarding costs may direct that the costs of any matter or application shall be taxed and paid as between party and party or as between solicitor and client, or that full costs, charges, and expenses shall be allowed, or the Court may fix a sum to be paid in lieu of taxed costs.

Awarding costs.
S. 105 (1).

(2) In the absence of any express direction costs of an opposed motion shall follow the event, and shall be taxed as between party and party.

(3) Where an action is brought against an official receiver or trustee in bankruptcy as representing the estate of the debtor, or where an official receiver or trustee in bankruptcy is made a party to a cause or matter, on the application of any other party thereto, he shall not be personally liable for costs unless the Court otherwise directs.

109. Every order for payment of money and costs, or either of them, shall be sealed, and be signed by a registrar, and shall be forthwith filed with the proceedings.

Orders to be sealed, signed, and filed.
R. 93.

110. The costs directed by any order to be paid shall be taxed on production of an office copy of such order, and the allocatur being duly stamped shall be signed and dated by the taxing-master or officer.

Taxation of costs.
S. 105 (1).

111. In a County Court costs shall be taxed by the registrar in person.

Registrar to tax in person.

RULES 112—117.

Scale of costs and charges. S. 121.

112.—(1) The scale of costs set forth in the Appendix, and the regulations contained in such scale, shall, subject to these Rules, apply to the taxation and allowance of costs and charges in all proceedings under the Act and these Rules.

Lower scale of costs if estate under £300.

(2) Subject to the provisions of No. 1 of the scale of costs, where the estimated assets of the debtor do not exceed the sum of three hundred pounds, a lower scale of solicitors' costs shall be allowed in all proceedings under the Act in which costs are payable out of the estate, namely, three-fifths of the charges ordinarily allowed, disbursements being added; and if in error any charges have been allowed or paid on the higher scale, and the gross proceeds of the assets shall be ascertained not to exceed three hundred pounds, the excess shall be disallowed, and if paid, shall be repaid to the trustee.

Re-taxation of costs when assets realise less than certified amounts. *Post*, p. 277.

112A. Where the assets of a debtor have been certified under paragraphs (*b*) or (*c*) of No. 1 of the scale of solicitors' costs as likely or not likely to realise the sums therein mentioned, and the gross proceeds of the assets are, after taxation and payment of the costs, ascertained to be less than the amount at which they have been certified, the bill of costs shall, on the application of the trustee, be retaxed, and the amount disallowed on such re-taxation shall, if paid, be refunded to the trustee. No fee shall be chargeable on such re-taxation.

Solicitor of petitioning debtor.

112B.—(1) There shall be added to No. 3 (special costs) of the scale of solicitors' costs contained in Part II. of the Appendix to the Bankruptcy Rules, 1886, the following item which shall be deemed to form part of such scale:—Where the solicitor to the petitioning debtor resides at a distance there shall be allowed in addition to the items specified in No. 1 of the scale for the attendance on presentation of the petition either by the solicitor, or by an agent, such sum as the taxing officer thinks reasonable not exceeding—In summary cases, twelve shillings; in other cases one pound. The allowance in summary cases shall not be subject to any reduction under Rule 112 (2).

(2) This Rule shall come into operation on September 1, 1896, and

(3) May be cited as Rule 112B.

Solicitor's costs in case of petition by debtor.

113. The solicitor in the matter of a bankruptcy petition presented by the debtor against himself shall, in his bill of costs, give credit for such sum or security (if any) as he may have received from the debtor, as a deposit on account of the costs and expenses to be incurred in and about the filing and prosecution of such petition; and the amount of any such deposit shall be noted by the taxing officer upon the allocatur issued for such costs.

Costs paid otherwise than out of estate.

114. When a bill of costs is taxed under any special order of the Court, and it appears by such order that the costs are to be paid otherwise than out of the estate of the bankrupt, the taxing officer shall specially note upon the allocatur by whom, or the manner in which, such costs are to be paid.

Bills of costs to be filed.

115. Upon the taxation of any bill of costs, charges, or expenses being completed, the taxing officer shall forthwith file such bill with the proceedings in the matter, and shall thereupon issue to the person presenting such bill for taxation his allocatur, or certificate of taxation, which shall be in the Form No. 141 in the Appendix.

Register of bills taxed.

116. Every taxing officer shall keep a register of all bills taxed by him, according to Form No. 142 in the Appendix, and shall, within fourteen days of the 31st day of December in each year, make a return to the Board of Trade, according to Form No. 143 in the Appendix, of all bills taxed by him during the twelve months preceding such 31st day of December.

Certificate of employment.

117. Before taxing the bill or charges of any solicitor, manager, accountant, auctioneer, broker, or other person employed by an official receiver or trustee, the taxing officer shall require a certificate in

writing, signed by the official receiver or trustee, as the case may be, to be produced to him, setting forth whether any, and if so what, special terms of remuneration have been agreed to, and in the case of the bill of costs of a solicitor, a copy of the resolution or other authority sanctioning the employment.

Sheriff's costs. See R. 119A.

118. In any case in which, pursuant to section 46 (1) of the Act, a sheriff is required to deliver goods to an official receiver or trustee, such sheriff shall, without delay, bring in his bill of costs for taxation, which shall be taxed by the taxing officer of the Court having jurisdiction in the bankruptcy; and unless such bill of costs is brought in for taxation within one month from the date when the sheriff makes such delivery, the official receiver or trustee may decline to pay the same.

Taxation of sheriff's costs after deduction. See R. 119A.

119. If the official receiver or trustee shall, in writing, require any costs which a sheriff has deducted under section 46 (2) of the Act to be taxed, the sheriff shall, within seven days from the date of the request, bring in such costs for taxation, which shall be taxed by the taxing officer of the Court having jurisdiction in the bankruptcy; and any amount disallowed on such taxation shall forthwith be paid over by the sheriff to the official receiver or trustee as the case may require.

Sheriff's costs.

119A. Rules 118 and 119 of the Bankruptcy Rules, 1886, shall be read as though there were substituted therein for the words "section 46 (1) of the Act," and "section 46 (2) of the Act," the words "section 11 (1) of the Bankruptcy Act, 1890," and "section 11 (2) of the Bankruptcy Act, 1890" respectively, and the term "goods" in the said Rule 118 shall be deemed to include money.

Notice of appointment.

120. Every person whose bill or charges is or are to be taxed shall in all cases give not less than seven days' notice of the appointment to tax the same to the official receiver and to the trustee (if any).

Lodgment of bill.

121. The bill or charges, if incurred prior to the appointment of a trustee, shall be lodged with the official receiver, and if incurred after the appointment of a trustee, shall be lodged with the trustee, three clear days before the application for the appointment to tax the same is made. The official receiver or the trustee, as the case may be, shall forthwith, on receiving notice of taxation, lodge such bill or charges with the proper taxing officer.

Copy of bill.

122. Every person whose bill or charges is or are to be taxed shall, on application either of the official receiver or the trustee, furnish a copy of his bill or charges so to be taxed, on payment at the rate of 4*d.* per folio, which payment may be charged to the estate. The official receiver shall call the attention of the trustee to any items which, in his opinion, ought to be disallowed or reduced.

Applications for costs. S. 105 (1).

123. Where any party to, or person affected by, any proceedings desires to make an application for an order that he be allowed his costs, or any part of them, incident to such proceeding, and such application is not made at the time of the proceeding—

(1) Such party or person shall serve notice of his intended application on the official receiver, and, if a trustee has been appointed, on the trustee:

(2) The official receiver and trustee may appear on such application and object thereto:

(3) No costs of or incident to such application shall be allowed to the applicant, unless the Court is satisfied that the application could not have been made at the time of the proceeding.

Review of taxation by Board of Trade. R. 104.

124.—(1) Where any bill of costs, charges, fees, or disbursements of any solicitor, manager, accountant, auctioneer, broker, or other person has been taxed by a registrar of a County Court, the Board of Trade may require the taxation to be reviewed by a bankruptcy taxing-master of the High Court.

RULES 124, 125.

(2) In any case in which the Board of Trade requires such a review of taxation as is above mentioned they shall give notice to the person whose bill has been taxed, and shall apply to the taxing-master of the High Court to appoint a time for the review of such taxation, and thereupon the taxing-master of the High Court shall appoint a time for the review of, and shall review, such taxation. The Board of Trade shall give to the person whose bill of costs is to be reviewed notice of the time appointed for the review.

(3) Where any such review of taxation as is above mentioned is required to be made by a bankruptcy taxing-master of the High Court, the registrar of the County Court shall (if required by the taxing-master) forward to the said taxing-master the bill which is required to be reviewed, and also the file of the proceedings.

(4) The Board of Trade may appear upon the review of the taxation; and if, upon the review of the taxation, the bill is allowed at a lower sum than the sum allowed by the registrar of the County Court, the amount disallowed shall (if the bill has been paid) be repaid to the official receiver, or the trustee, or other person entitled thereto. The certificate of the taxing-master shall in every case of a review by him under this Rule be a sufficient authority to entitle the person to whom the amount disallowed ought to be repaid to demand such amount from the person liable to repay the same.

(5) There shall be allowed to the person whose bill is reviewed such costs of and incidental to his appearance on the review as the bankruptcy taxing-master of the High Court shall think proper, and such costs shall be paid to such person out of the estate: provided that the costs of the attendance of a principal shall not be allowed if in the opinion of the taxing-master he could have been sufficiently represented by his London agent.

Priority of costs and charges payable out of estate.

125. The assets in every matter remaining, after payment of the actual expenses incurred in realising any of the assets of the debtor, shall, subject to any order of the Court, be liable to the following payments, which shall be made in the following order of priority, namely :—

S. 105 (1). Rs. 189A (4), 324.

First. The actual expenses incurred by the official receiver in protecting the property or assets of the debtor, or any part thereof, and any expenses or outlay incurred by him or by his authority in carrying on the business of the debtor:

Next. The fees, percentages, and charges payable under Table B. of the Scale of Fees; and any other fees payable to, or costs, charges, and expenses incurred or authorised by, the official receiver:

,, The fee which, under the Scale of Fees for the time being in force, is required to be affixed to the copy of the cash book when forwarded for audit:

R. 147. ,, The deposit or deposits lodged by the petitioning creditor pursuant to these Rules:

Rs. 170—5. ,, The deposit or deposits lodged on any application for the appointment of an interim receiver:

S. 12 (3). ,, The remuneration of the special manager (if any):

R. 343. ,, The taxed costs of the petitioner:

R. 183. ,, The remuneration and charges of the person (if any) appointed to assist the debtor in the preparation of his statement of affairs:

S. 70 (2). ,, Any allowance made to the debtor by the official receiver:

R. 326. ,, The taxed charges of any shorthand writer appointed by the Court:

See R. 125A. ,, The trustee's necessary disbursements other than actual expenses of realisation heretofore provided for:

Next. The costs of any person properly employed by the trustee with the sanction of the committee of inspection:

,, Any allowance made to the debtor by the trustee with the sanction of the committee of inspection:

,, The remuneration of the trustee:

,, The actual out of pocket expenses necessarily incurred by the committee of inspection, subject to the approval of the Board of Trade.

Costs of shorthand notes. R. 67A.

125A. Where at the instance of the official receiver a shorthand writer is appointed to take notes of the examination of the debtor at his public examination, the costs of such notes shall be deemed to be an expense incurred or authorised by the official receiver, and shall be payable out of the estate of the bankrupt in the order of priority in which such expenses are payable under the provisions of Rule 125 of the Bankruptcy Rules, 1886.

Disallowance of costs of unnecessary petition. S. 105 (1).

126. In any case in which, after a bankruptcy petition has been presented by a creditor against a debtor, and before the hearing of such petition, the debtor files a petition, and a receiving order is made on the petition of the debtor, unless in the opinion of the Court the estate has benefited thereby, or there are special circumstances which make it just that such costs should be allowed, no costs shall be allowed to the debtor or his solicitor out of the estate.

Apportionment of costs in case of partnership.

127. In the case of a bankruptcy petition against a partnership, the costs payable out of the estates incurred up to and inclusive of the receiving order shall be apportioned between the joint and separate estates in such proportions as the official receiver may in his discretion determine.

Costs out of joint or separate estates. S. 40 (3).

128.—(1) Where the joint estate of any co-debtors is insufficient to defray any costs or charges properly incurred prior to the appointment of the trustee, the official receiver may pay or direct the trustee to pay such costs or charges out of the separate estates of such co-debtors, or one or more of them, in such proportions as in his discretion the official receiver may think fit. The official receiver may also, as in his discretion he may think fit, pay or direct the trustee to pay any costs or charges properly incurred, prior to the appointment of the trustee, for any separate estate out of the joint estate or out of any other separate estate, and any part of the costs or charges of the joint estate incurred prior to the appointment of the trustee which affects any separate estate out of that separate estate.

(2) Where the joint estate of any co-debtors is insufficient to defray any costs or charges properly incurred after the appointment of the trustee, the trustee, with such consent as hereinafter mentioned, may pay such costs or charges out of the separate estates of such co-debtors, or one or more of them. The trustee, with the said consent, may also pay any costs or charges properly incurred for any separate estate, after his appointment out of the joint estate, and any part of the costs or charges of the joint estate incurred after his appointment which affects any separate estate out of that separate estate. No payment under this Rule shall be made out of a separate estate or joint estate by a trustee without the consent of the committee of inspection of the estate out of which the payment is intended to be made, or, if such committee withhold or refuse their consent, without an order of the Court.

Appeals.

S. 104.

Restrictions on appeal. R. 3.

129.—(1) Except by leave of the Court there shall be no appeal to the Court of Appeal from any order made by consent, or as to costs only.

(2) Except by leave of the Court no appeal to the Court of Appeal

RULES 129—135.

shall be brought from any order relating to property when it is apparent from the proceedings that the money or money's worth involved does not exceed £50.

(3) No appeal shall be brought in respect of the omission by the Court appealed from to exercise any discretionary power, unless the Court shall in its judgment, or on application made at the hearing, have expressly refused to exercise such power, in which case the refusal may be made a ground of appeal.

Time for appeal. R. 351.

130. Subject to the powers of the Court of Appeal to extend the time under special circumstances, no appeal to the Court of Appeal from any order of the Court shall be brought after the expiration of twenty-one days. The said period shall be calculated from the time at which the order is signed, entered, or otherwise perfected, or, in the case of the refusal of an application, from the date of such refusal.

Security for costs of appeal.

131. At or before the time of entering an appeal the party intending to appeal shall lodge in the High Court the sum of twenty pounds to satisfy, in so far as the same may extend, any costs that the appellant may be ordered to pay. Provided that the Court of Appeal may in any special case increase or diminish the amount of such security or dispense therewith.

Notice of appeal.

132. Upon entering an appeal, a copy of the notice of appeal shall forthwith be sent by the appellant to the registrar of the Court appealed from, who shall mark thereon the date when received and forthwith file the same with the proceedings.

File of proceedings.

133. The registrar of the Court appealed from shall, upon the application of the senior registrar of the High Court, transmit to him the file of proceedings in the matter under appeal.

Procedure on appeals. R. 3.

134. Subject to the foregoing Rules, appeals to the Court of Appeal shall be regulated by Order LVIII. of the Rules of the Supreme Court, 1883, and any Rules amending the same; and in the said Order and Rules amending the same the term "Court of Appeal" shall, for the purposes of the Bankruptcy Act, 1883, and these Rules, have the same meaning as in these Rules.

Appeals from County Courts.

Interlocutory motions on appeal. 47 Vict. c. 9.

134A. Where there is an appeal to the High Court from an order of a County Court in a bankruptcy matter, any order or direction incidental thereto, not involving the decision of the appeal, may be given by the Judge of the High Court for the time being exercising bankruptcy jurisdiction, but any such order or direction may be discharged or varied by the High Court.

Rescission of Receiving Order, and Annulment of Adjudication.

Application to rescind receiving order, to stay proceedings thereunder, or to annul adjudication. S. 35. R. 194.

134B. An application to the Court to rescind a receiving order or to stay proceedings thereunder, or to annul an adjudication, shall not be heard except upon proof that notice of the intended application, and a copy of the affidavits in support thereof, have been duly served upon the official receiver. Unless the Court gives leave to the contrary, notice of any such application shall be served on the official receiver not less than seven days before the day named in the notice for hearing the application. Pending the hearing of the application, the Court may make an interim order staying such of the proceedings as it thinks fit.

PART II.

Proceedings from Act of Bankruptcy to Discharge.

Declaration of Inability to pay Debts.

Form of declaration. S. 4 (1 *f*). R. 261.

135. A declaration by a debtor of his inability to pay his debts shall be dated, signed, and witnessed, and shall be in the Form No. 3 in the

Appendix, with such variations as circumstances may require. The witness shall be a solicitor, or justice of the peace, or an official receiver or registrar of the Court.

Bankruptcy Notice.

What Court to issue. S. 4 (2). S. 95.

136.—(1) A bankruptcy notice shall be in the Form No. 6 in the Appendix, with such variations as circumstances may require.

(2) A bankruptcy notice may be issued by any Court in which a bankruptcy petition against the debtor might be filed.

(3) A bankruptcy notice shall not be invalid by reason that it is issued by a wrong Court, but in such case the Court may, if it think fit, on the application of the debtor, order the notice to be set aside on such terms as to costs or otherwise as may be just.

Issue of notice.

137. A creditor, desirous that a bankruptcy notice may be issued, shall produce to the registrar an office copy of the judgment on which the notice is founded and file the notice, together with a request for issue, which shall be in Form No. 5 in the Appendix, with such variations as circumstances may require. The creditor shall at the same time lodge with the registrar two copies of the bankruptcy notice to be sealed and issued for service.

Indorsement of address, &c.

138.—(1) Every bankruptcy notice shall be indorsed with the name and place of business of the solicitor actually suing out the same, or if no solicitor be employed, with a memorandum that it is sued out by the creditor in person.

(2) There shall also be indorsed on every bankruptcy notice an intimation to the debtor that if he has a counter-claim, set-off, or cross-demand which equals or exceeds the amount of the judgment debt, and which he could not have set up in the action in which the judgment was obtained, he must within the time specified in the notice, file an affidavit to that effect with the registrar.

(3) In the case of a notice served in England the time shall be three days. In the case of a notice served elsewhere the registrar, when issuing the notice, shall fix the time.

Application to set aside.

139. The filing of such affidavit shall operate as an application to set aside the bankruptcy notice, and thereupon the registrar shall fix a day for hearing the application, and not less than three days before the day so fixed shall give notice thereof both to the debtor and the creditor, and their respective solicitors, if known. If the application cannot be heard until after the expiration of the time specified in the notice as the day on which the act of bankruptcy will be complete, the registrar shall extend the time, and no act of bankruptcy shall be deemed to have been committed under the notice until the application has been heard and determined.

Duration of notice. S. 105 (4). Rs. 154, 351.

140. Subject to the power of the Court to extend the time, a bankruptcy notice to be served in England shall be served within one month from the issue thereof.

Service of notice. Rs. 153—6. 260.

141. A bankruptcy notice shall be served, and service thereof shall be proved in the like manner as is by these Rules prescribed for the service of a creditor's petition.

Setting aside notice.

142. When the Court makes an order setting aside the bankruptcy notice, it may at the same time declare that no act of bankruptcy has been committed by the debtor under such notice.

Bankruptcy Petition.

Ss. 6—8. Form of petition.

143. Every petition shall be fairly written or printed, or partly written and partly printed, and no alterations, interlineations, or erasures shall be made without the leave of the registrar, except so far as may be necessary to adapt a printed form to the circumstances of the particular case. A debtor's petition shall be in Form No. 4,

RULES 143—150.

and a creditor's petition shall be in Form No. 10 in the Appendix, with such variations as circumstances may require.

Description and address of debtor.

144.—(1) Where a petition is presented by a debtor he shall, besides inserting therein his name and description, and his address at the date when the petition is presented, further describe himself as lately residing or carrying on business at the address or several addresses, as the case may be, at which he has incurred debts and liabilities which at the date of the petition remain unpaid or unsatisfied.

(2) Where a petition is presented against a debtor who resides or carries on business at an address other than the address at which the debtor was residing or carrying on business at the time of contracting the debt or liability in respect of which the petition is presented, the petitioning creditor, in addition to stating in the petition the description of the debtor, as of his then present address and description, shall, in the petition, describe the debtor as lately residing or carrying on business at the address at which he was residing or carrying on business when the debt or liability was incurred.

145. Subject to the provisions of section 95 of the Act, where a debtor has for the greater part of six months next preceding the presentation of a bankruptcy petition carried on business within the district of one Court, and resided within the district of another Court, the petition shall be filed in the Court within the district of which he carried on business.

146. Every bankruptcy petition shall be attested. If it be attested in England the witness must be a solicitor or a justice of the peace or a commissioner for oaths or registrar of the Court. If it be attested out of England the witness must be a judge or magistrate or a British consul or vice-consul or notary public.

Notice of appeal.

File of proceedings.

Procedure on appeals.
R. 3.

134. Subject to the Bankruptcy Act, 1883, and any General Order and Rules amending the same, the presentation of a petition either by the debtor or by a creditor shall, for the purposes of the Act, mean the time when the debtor or creditor shall deposit with the official receiver such further sum (if any) as the Court may require to cover the fees and expenses to be incurred in the matter, and no petition shall be received or filed before the deposit is made. The terms "debtor" and "creditor" shall have the same meaning as in the Act.

Appeals from and no petition shall be received

Interlocutory motions on appeal.
47 Vict. c. 9.

134A. Where there is an appeal from the decision of a County Court in a bankruptcy matter, notice of appeal shall be given to the proper officer of the High Court within seven days from the decision complained of, and all proceedings incidental thereto, not involving the decision of the High Court, shall be taken in the County Court. Any order given by the Judge of the High Court for the payment out of the money so deposited shall be a sufficient authority to the official receiver in bankruptcy jurisdiction, but any such payment shall be made out of the debtor's estate, and any money so paid out shall be repaid to such creditor or debtor as the High Court may direct. The deposit shall be returned, or dealt with as may be required by reason of the decision of the High Court, after payment thereout of the fees of and expenses incidental to the proceedings in the High Court.

Rescission of Receiving Order, and Annulm

Application to rescind receiving order, to stay proceedings thereunder, or to annul adjudication.
S. 35.
R. 194.

134B. An application to the Court to rescind a receiving order, or to stay proceedings thereunder, or to annul an adjudication, shall not be heard except upon proof that notice of the intended application, and a copy of the affidavits in support thereof, have been served upon the official receiver. Unless the Court gives whose estate contrary, notice of any such application shall be served upon the official kruptcy, or receiver not less than seven days before the day named in the notice has made for hearing the application. Pending the hearing of the application, the Court may make an interim order staying such of the proceedings paid by to the as it thinks fit.

PART II.

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PROCEEDINGS FROM ACT OF BANKRUPTCY TO DISCHARGE.

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Declaration of Inability to pay Debts.

Form of declaration.
S. 4 (1 *f*).
R. 261.

135. A declaration by a debtor of his inability to pay his debts shall be dated, signed, and witnessed, and shall be in the Form No. 3 in the

151. Where a petition is presented by two or more creditors jointly, it shall not be necessary that each creditor shall depose to the truth of all the statements which are within his own knowledge; but it shall be sufficient that each statement in the petition is deposed to by some one within whose knowledge it is. Joint petitioners. R. 259.

152. After the presentation of a creditor's petition, and before sealing the copies of the petition for service, the statements in the petition shall be investigated by the registrar, and where some of the statements in the petition cannot be verified by affidavit, witnesses may be summoned to prove the same. Investigation of petition.

Service of Creditor's Petition. S. 7.

153. A creditor's petition shall be personally served by delivering to the debtor a sealed copy of the filed petition. Personal service.

154. A petition shall be served upon the debtor by an officer or bailiff of the Court, or by the creditor or his solicitor, or by some person in their employ; provided that if personal service cannot be effected, the Court may extend the time for hearing the petition, or if the Court is satisfied by affidavit or other evidence on oath that the debtor is keeping out of the way to avoid such service, or service of any other legal process, or that for any other cause prompt personal service cannot be effected, it may order substituted service to be made by delivery of the petition to some adult inmate at his usual or last known residence or place of business, or by registered letter, or in such other manner as the Court may direct, and that such petition shall then be deemed to have been duly served on the debtor. Rs. 136, 260. Substituted service. R. 140.

155. Service of the petition shall be proved by affidavit, with a sealed copy of the petition attached, which shall be filed in Court forthwith after the service. Proof of service.

156. Where a debtor petitioned against is not in England, the Court may order service to be made within such time and in such manner and form as it shall think fit. Service out of jurisdiction. S. 6 (1*d*).

156A. If a debtor against whom a bankruptcy petition has been filed dies before service thereof, the Court may order service to be effected on the personal representatives of the debtor, or on such other persons as the Court may think fit. S. 95. Death of debtor before service of petition. S. 108.

Hearing of Petition. S. 7.

157.—(1) Where a petition is filed by a debtor, the Court shall forthwith make a receiving order thereon. Proceedings on petition.

(2) A creditor's petition shall not be heard until the expiration of eight days from the service thereof: Provided that where the act of bankruptcy alleged is that the debtor has filed a declaration of inability to pay his debts, or where it is proved to the satisfaction of the Court that the debtor has absconded, or in any other case for good cause shown, the Court may, on such terms, if any, as the Court may think fit to impose, hear the petition at such earlier date as the Court may deem expedient. S. 8. Rs. 113, 261.

158. The registrar shall appoint the time and place at which the petition will be heard, and notice thereof shall be written on the petition and sealed copies, and where the petition has not been served the registrar may from time to time alter the first day so appointed, and appoint another day and hour. Time of hearing.

159. Where there are more respondents than one to a petition the rules as to service shall be observed with respect to each respondent, but where all the respondents have not been served, the petition may be heard separately or collectively as to the respondent or such of the Several respondents. Ss. 111, 115. R. 260.

RULES 143—150.

and a creditor's petition shall be in Form No. 10 in the Appendix, with such variations as circumstances may require.

Description and address debtor.

144.—(1) Where a petition is presented by a debtor he shall, besides inserting therein his name and description, and his address at he date when the petition is presented, further describe himself as ely residing or carrying on business at the address or several resses, as the case may be, at which he has incurred debts and lities which at the date of the petition remain unpaid or isfied.

Where a petition is presented against a debtor who resides or on business at an address other than the address at which or was residing or carrying on business at the time of g the debt or liability in respect of which the petition is the petitioning creditor, in addition to stating in the e description of the debtor, as of his then present address tion, shall, in the petition, describe the debtor as lately carrying on business at the address at which he was carrying on business when the debt or liability was

app

Notice of appeal.

t to the provisions of section 95 of the Act, where a e greater part of six months next preceding the bankruptcy petition carried on business within the , and resided within the district of another Court. filed in the Court within the district of which he

File of p ceedings.

y petition shall be attested. If it be attested ust be a solicitor or a justice of the peace or trar of the Court. If it be attested out of e a judge or magistrate or a British consul blic.

Procedu appeals. R. 3.

ation of a petition either by the debtor shall deposit with the official receiver uch further sum (if any) as the Court o cover the fees and expenses to be and no petition shall be received iver for the deposit payable on the tcy ed to the proper officer of the e de

Interlo motions appeal

urt fo for the money so deposited uch the debtor's estate, and any art. e repaid to such creditor nnulme required by reason of rescind fees of and expenses eds of the estate in ul an adj

abroad of the inte eof, have b Court gives ll be served whose estate day named in kruptcy, or has made aring of the a paid by such of the pro to the

when led

TO DISCHARGE.

Debts. e

o pay his debts shall e Form No. 3 in the

151. Where a petition is presented by two or more creditors jointly, it shall not be necessary that each creditor shall depose to the truth of all the statements which are within his own knowledge; but it shall be sufficient that each statement in the petition is deposed to by some one within whose knowledge it is. Joint petitioners. R. 259.

152. After the presentation of a creditor's petition, and before sealing the copies of the petition for service, the statements in the petition shall be investigated by the registrar, and where some of the statements in the petition cannot be verified by affidavit, witnesses may be summoned to prove the same. Investigation of petition.

Service of Creditor's Petition. S. 7.

153. A creditor's petition shall be personally served by delivering to the debtor a sealed copy of the filed petition. Personal service.

154. A petition shall be served upon the debtor by an officer or bailiff of the Court, or by the creditor or his solicitor, or by some person in their employ; provided that if personal service cannot be effected, the Court may extend the time for hearing the petition, or if the Court is satisfied by affidavit or other evidence on oath that the debtor is keeping out of the way to avoid such service, or service of any other legal process, or that for any other cause prompt personal service cannot be effected, it may order substituted service to be made by delivery of the petition to some adult inmate at his usual or last known residence or place of business, or by registered letter, or in such other manner as the Court may direct, and that such petition shall then be deemed to have been duly served on the debtor. Rs. 136, 260. Substituted service. R. 140.

155. Service of the petition shall be proved by affidavit, with a sealed copy of the petition attached, which shall be filed in Court forthwith after the service. Proof of service.

156. Where a debtor petitioned against is not in England, the Court may order service to be made within such time and in such manner and form as it shall think fit. Service out of jurisdiction. S. 6 (1*d*).

156A. If a debtor against whom a bankruptcy petition has been filed dies before service thereof, the Court may order service to be effected on the personal representatives of the debtor, or on such other persons as the Court may think fit. S. 95. Death of debtor before service of petition. S. 108.

Hearing of Petition. S. 7.

157.—(1) Where a petition is filed by a debtor, the Court shall forthwith make a receiving order thereon. Proceedings on petition.

(2) A creditor's petition shall not be heard until the expiration of eight days from the service thereof: Provided that where the act of bankruptcy alleged is that the debtor has filed a declaration of inability to pay his debts, or where it is proved to the satisfaction of the Court that the debtor has absconded, or in any other case for good cause [redacted] the Court may, on such terms, if any, as the Court may think [redacted]ose, hear the petition at such earlier date as the Court may [redacted]ient. S. 8. Rs. 113, 261.

[redacted]trar shall appoint the time and place at which the [redacted] heard, and notice thereof shall be written on the [redacted]l copies, and where the petition has not been served from time to time alter the first day so appointed, [redacted]r day and hour. Time of hearing.

[redacted]e are more respondents than one to a petition the [redacted]shall be observed with respect to each respondent, [redacted]pondents have not been served, the petition may [redacted]r collectively as to the respondent or such of the Several respondents. Ss. 111, 115. R. 260.

RULES 159—168.

respondents as has or have been served, and separately or collectively as to the respondents not then served according as service upon them is effected.

Debtor intending to show cause.

160. Where a debtor intends to show cause against a petition he shall file a notice with the registrar specifying the statements in the petition which he intends to deny or dispute, and transmit by post to the petitioning creditor and his solicitor, if known, a copy of the notice three days before the day on which the petition is to be heard.

Non-appearance of debtor. S. 7 (2).

161. If the debtor does not appear at the hearing, the Court may make a receiving order on such proof of the statements in the petition as the Court shall think sufficient.

Appearance of debtor to show cause. S. 7.

162. On the appearance of the debtor to show cause against the petition, the petitioning creditor's debt, and the act of bankruptcy, or such of those matters as the debtor shall have given notice that he intends to dispute shall be proved, and if any new evidence of those matters, or any of them, shall be given, or any witness or witnesses to such matters shall not be present for cross-examination, and further time shall be desired to show cause, the Court shall, if the application appears to the Court to be reasonable, grant such further time as the Court may think fit.

Non-appearance of creditor. S. 7 (7).

163. If any creditor neglects to appear on his petition, no subsequent petition against the same debtor or debtors, or any of them, either alone or jointly with any other person, shall be presented by the same creditor in respect of the same act of bankruptcy without the leave of the Court to which the previous petition was presented.

Personal attendance of creditor when dispensed with.

164. The personal attendance of the petitioning creditor and of the witnesses to prove the debt, and act of bankruptcy or other material statements, upon the hearing of the petition, may, if the Court shall think fit, be dispensed with.

Proceeding after trial of disputed question. S. 7 (5), (6).

165. Where proceedings on a petition have been stayed for the trial of the question of the validity of the petitioning creditor's debt, and such question has been decided in favour of the validity of the debt, the petitioning creditor may apply to the registrar to fix a day on which further proceedings on the petition may be had, and the registrar on production of the judgment of the Court in which the question was tried, or an office copy thereof, shall give notice to the petitioner by post of the time and place fixed for the hearing of the petition, and a like notice to the debtor at the address given in his notice to dispute, and also to their respective solicitors, if known.

Application to dismiss.

166. Where proceedings on a petition have been stayed for the trial of the question of the validity of the petitioning creditor's debt, and such question has been decided against the validity of the debt, the debtor may apply to the registrar to fix a day on which he may apply to the Court for the dismissal of the petition with costs, and the registrar on the production of the judgment of the Court in which the question was tried, or an office copy thereof, shall give notice to both the petitioner and debtor (and to their respective solicitors, if known) by post of the time and place fixed for the hearing of the application.

Application for extension of time. R. 351.

167. An application for extension of time for hearing a petition shall be in writing, but need not be supported by affidavit unless in any case the Court shall otherwise require.

Order for extension of time.

168. On an application for extension of time for the hearing of a petition, no order shall be made for an extension beyond fourteen days from the day fixed for the hearing of the petition, unless the Court is satisfied that such extension of time will not be prejudicial to the general body of creditors. Any costs occasioned by such application shall not be allowed out of the estate unless so ordered by the Court.

169. After the expiration of one month from the day appointed for the first hearing of a petition (provided such petition shall have been duly served) no further adjournment of the hearing merely by consent of the parties shall be allowed, except for the reasons set forth in Rule 162 of these Rules, or for such other sufficient reason to be stated in the order for adjournment as the Court shall think fit; but in every such case, unless an order for adjournment is made, the Court shall either make a receiving order or dismiss the petition.

Adjournments of hearing.

Interim Receiver.

S. 10.

170. After the presentation of a petition, upon the application of a creditor, or of the debtor himself, and upon proof by affidavit of sufficient grounds for the appointment of the official receiver as interim receiver of the property of the debtor, or any part thereof, the Court may, if it thinks fit, and upon such terms as may be just, make such appointment.

Appointment of interim receiver.

S. 10.

171. Where an order is made appointing the official receiver to be interim receiver of the property of the debtor, such order shall bear the number of the petition in respect of which it is made, and shall state the locality of the property of which the official receiver is ordered to take possession.

Form and contents of order.

172. Before any such order is issued, the person who has made the application therefor shall deposit with the official receiver the sum of £5 towards the prescribed fee for the official receiver, and such further sum as the Court shall direct for the expenses which may be incurred by him.

Deposit.

173. If the sum of £5, and such further sum so to be deposited for the expenses which may be incurred by the official receiver, shall prove to be insufficient, the person, on whose application the order has been made, shall from time to time deposit with the official receiver such additional sum as the Court may, on the application of the official receiver, from time to time direct; and such sum shall be deposited within 24 hours after the making of the order therefor. If such additional sum shall not be so deposited, the order appointing the interim receiver may be discharged by the Court.

Further deposit if necessary.

174. If an order appointing an interim receiver is followed by a receiving order, the deposits made by the creditor, on whose application such interim receiver was appointed, shall be repaid to him (except and so far as such deposits may be required by reason of insufficiency of assets for the payment of the fees chargeable, and the expenses incurred by the interim receiver), out of the proceeds of the estate in the order of priority prescribed by these Rules.

Repayment of deposit.

175. Where, after an order has been made appointing an interim receiver, the petition is dismissed, the Court shall, upon application to be made within 21 days from the date of the dismissal thereof, adjudicate, with respect to any damages or claim thereto arising out of the appointment, and shall make such order as the Court thinks fit; and such decision or order shall be final and conclusive between the parties, unless the order be appealed from.

Damages if petition dismissed.

Semble, these Rules do not apply to special managers: *In re A. B. & Co.*, No. 2, (1900) 2 Q. B. 429.

Receiving Order.

S. 5.

176.—(1) A receiving order shall be in one of the Forms Nos. 28 and 29 in the Appendix, with such variations as circumstances may require.

Form and contents.

R. 262.

(2) When the receiving order is made on a creditor's petition there shall be stated in the receiving order the nature and date, or dates, of the act, or acts, of bankruptcy upon which the order has

RULES 176—185.

been made. Every order shall contain at the foot thereof a notice requiring the debtor to attend on the official receiver forthwith on the service thereof at the place mentioned therein.

Preparation.

177. Every receiving order, and order for the appointment of the official receiver as interim receiver of a debtor's property, shall be prepared by the registrar, and in cases in which printed forms can be conveniently used, may be partly in print and partly in writing. Where the petitioner is represented by a solicitor the receiving order shall be endorsed with the name and address of such solicitor.

Transmission of copy to official receiver.

178. A copy of every receiving order and order for the appointment of the official receiver as interim receiver of the debtor's property, sealed with the seal of the Court, shall forthwith be sent by post or otherwise by the registrar to the official receiver.

Service of receiving order.

179. The official receiver shall cause a copy of the receiving order sealed with the seal of the Court to be served on the debtor.

Receiving order on bankruptcy notice. Cf. s. 4 (2), Rs. 139, 142.

180. A receiving order shall not be made against a debtor on a petition in which the act of bankruptcy alleged is non-compliance with a bankruptcy notice within the appointed time, where such debtor shall have applied to set aside such notice until after the hearing of the application, or where the notice has been set aside, or during a stay of the proceedings thereon; but in such case the petition shall be adjourned or dismissed as the Court may think fit.

Stay of proceedings. S. 9.

181. There may be included in a receiving order an order staying any action or proceeding against the debtor or staying proceedings generally.

Advertisement.

182.—(1) Where a receiving order is made in the High Court, the senior bankruptcy registrar, and in a County Court the registrar, shall forthwith give notice thereof to the Board of Trade.

Rs. 193 (2), 280—1.

(2) The official receiver shall forthwith send notice thereof to such local paper as the Board of Trade may from time to time direct, or in default of such direction as he may select.

(3) The notices shall be in the Forms Nos. 31 and 32 in the Appendix, with such variations as circumstances may require.

Costs of petition, &c. Rs. 125, 147—8, 357.

183.—(1) All proceedings under the Act down to and including the making of a receiving order shall be at the cost of the party prosecuting the same, but when a receiving order is made, the costs of the petitioning creditor (including the costs of the bankruptcy notice (if any) sued out by him) shall be taxed and be payable out of the proceeds of the estate, in the order and priority prescribed by these Rules.

S. 105 (1).

(2) When the proceeds of the estate are not sufficient for the payment of any costs necessarily incurred by the official receiver (in excess of the deposit) between the making of a receiving order and the conclusion of the first meeting of creditors, the Court may order such costs to be paid by the party prosecuting the proceedings.

S. 17.

Public Examination of Debtor.

Time for holding public examination. S. 17 (1). R. 282.

184. When a receiving order has been made against a debtor, it shall be the duty of the official receiver to make an application to the Court to appoint a day and hour for holding the public examination of the debtor, and, upon such application being made, the Court shall, by an order, appoint the day and hour for such public examination, and shall order the debtor to attend the court upon such day and at such hour.

Default by debtor in attending.

185. If the debtor fails to attend the public examination at the time and place appointed by any order for holding or proceeding with the same, and no good cause is shown by him for such failure, it shall be lawful for the Court, upon its being proved to the satisfaction of

the Court that the order requiring the debtor to attend the public examination was duly served, and without any further notice to the debtor, to issue a warrant for his arrest as provided by section 25 (1) (*d*) of the Act, or to make such other order as the Court shall think just.

Notice to creditors of examination.

186. Where any order is made appointing the time and place for holding the public examination of a debtor, the official receiver shall serve a copy thereof on the debtor, and shall give to the creditors notice of such order, and of the time and place appointed thereby. The official receiver shall also send a notice of such order to such local paper as the Board of Trade may from time to time direct, or in default of such direction as he may think fit, and shall forward notice of such order to the Board of Trade to be gazetted.

Adjournments *sine die*. S. 17 (3).

187. Where the Court is of opinion that a debtor is failing to disclose his affairs, or where the debtor has failed to attend the public examination or any adjournment thereof, or where the debtor has not complied with any order of the Court in relation to his accounts, conduct, dealings, and property, and no good cause is shown by him for such failure, the Court may adjourn the public examination *sine die*, and may make such further or other order as the Court shall think fit.

Proceedings after adjournment *sine die*.

188. Where an examination has been adjourned *sine die*, and the debtor desires to have a day appointed for proceeding with his public examination, the expense of gazetting, advertising, and giving notice to creditors of the day to be appointed for proceeding with such examination shall, unless the official receiver or trustee, as the case may be, consents to the costs being paid out of the estate, be at the cost of the debtor, who shall, before any day is appointed for proceeding with the public examination, deposit with the official receiver such sum as the official receiver shall think sufficient to defray the expense aforesaid. The balance of the deposit after defraying the expense aforesaid shall be returned to the debtor.

Notice of proceedings after adjournment *sine die*. S. 17.

189. In any case in which a public examination has been adjourned *sine die*, and the Court afterwards makes an order for proceeding with such public examination, notice to creditors of the time and place appointed for proceeding with such public examination shall be sent by the official receiver, and notice shall also be inserted in the *London Gazette*, and in the local paper in which the notice of the first holding of the public examination was inserted, seven days before the day appointed.

Public examination of debtor who is a lunatic. S. 2, B. A. 1890.

189A.—(1) An application for an order dispensing with the public examination of a debtor, or directing that the debtor be examined in some manner or at some place other than is usual, on the ground that the debtor is a lunatic or suffers from mental or physical affliction or disability rendering him unfit to attend a public examination, may be made by the official receiver, or by any person who has been appointed by any Court having jurisdiction so to do to manage the affairs of or represent the debtor, or by any relative or friend of the debtor who may appear to the Court to be a proper person to make the application.

(2) Where the application is made by the official receiver, it may be made *ex parte*, and the evidence in support of the application may be given by a report of the official receiver to the Court, the contents of which report shall be received as *primâ facie* evidence of the matters therein stated.

(3) Where the application is made by some person other than the official receiver, it shall be made by motion, of which notice shall be given to the official receiver and trustee (if any), and shall, except in the case of a lunatic so found by inquisition, be supported by an affidavit of a duly registered medical practitioner as to the physical and mental condition of the debtor.

RULES 189A—195.

(4) Where the order is made on the application of the official receiver, the expense of holding the examination shall be deemed to be an expense incurred by the official receiver within the meaning of Rule 125 of the Bankruptcy Rules, 1886. Where the application is made by any other person, he shall, before any order is made on the application, deposit with the official receiver such sum as the official receiver shall certify to be necessary for the expenses of the examination.

(5) The order to be made on the application shall be in the Form No. 41A or the Form No. 41B in the Appendix, as the case may be, with such variations as circumstances may require.

Adjudication.

S. 20.

Adjudication on application of debtor.

190. At the time of making a receiving order, or at any time thereafter, the Court may, on the application of the debtor himself, adjudge him bankrupt. Such application may be made orally and without notice.

Adjudication on application of other parties.
S. 16 (3).

191. When a receiving order has been made, and a quorum of creditors do not attend at the time and place appointed for the first meeting, or one adjournment thereof, or where the official receiver satisfies the Court that the debtor has absconded, or that the debtor does not intend to propose a composition or scheme, or in any of the other cases mentioned in the Act, the Court may, either on the application of a creditor, or of the official receiver, forthwith adjudge the debtor bankrupt.

Adjudication on failure of composition or scheme.

192. Where a composition or scheme is not accepted by the creditors at the first meeting or at one adjournment thereof, the Court may, on the application of the official receiver, or of any person interested, adjudge the debtor bankrupt.

Adjudication on adjournment of public examination *sine die.*

192A. Where the public examination of a debtor is adjourned *sine die*, and the debtor has not previously been adjudged bankrupt, the Court may forthwith, and without any notice to the debtor, adjudge him bankrupt.

Form and notice of order of adjudication.
Rs. 182, 264, 280—1.

193.—(1) An order of adjudication shall be in the Form No. 55 in the Appendix, with such variations as circumstances may require.

(2) When a debtor is adjudged bankrupt in the High Court the senior bankruptcy registrar, and in a County Court the registrar, shall forthwith give notice thereof to the official receiver and to the Board of Trade, who shall advertise and gazette the adjudication in the like manner as is provided in the case of a receiving order.

Order annulling adjudication.
S. 35.
R. 183A.

194.—(1) An order annulling an adjudication may be in the Form No. 57 in the Appendix, with such variations as circumstances may require.

(2) When an adjudication is annulled in the High Court the senior bankruptcy registrar, and in a County Court the registrar, shall forthwith give notice thereof to the Board of Trade in order that the annulment may be gazetted.

(3) The order of the Court annulling the adjudication shall not relieve a trustee from the liability imposed on trustees by the Act and Rules to account to the Board of Trade for all transactions of such trustee in connection with the estate.

Service of Proceedings.

Service when abroad.

195. Where a debtor against whom a receiving order has been made is not in England, the Court may order service on the debtor of the receiving order, order of adjudication, order to attend the public examination or any adjournment thereof, or of any other order made

against, or summons issued for the attendance of, the debtor, to be made within such time and in such manner and form as it shall think fit.

Composition or Scheme.

S. 3 of B. A., 1890, and s. 23.

196. Where a debtor intends to submit a proposal for a composition or scheme, the forms of proposal, notice and report, Nos. 80A, 81, 81A, 81B and 82, in the Appendix, with such variations as circumstances may require, shall be used by the official receiver for the purpose of the meeting of creditors for the consideration of the proposal.

Forms where proposal submitted by debtor.

197. Where the creditors have accepted a composition or scheme, and the public examination of the debtor has been concluded, the official receiver or the debtor may forthwith apply to the Court to fix a day for the hearing of an application for the approval of such composition or scheme. The official receiver shall not by making such application be deemed necessarily to approve of the composition or scheme.

Application by debtor or official receiver for approval of Court.

S. 3 of B. A., 1890 (5), (6).

198. Any person other than the official receiver who applies to the Court to approve of a composition or scheme shall, not less than ten days before the day appointed for hearing the application, send notice of the application to the official receiver.

Notice to official receiver.

199. Whenever an application is made to the Court to approve of a composition or scheme, the official receiver shall, not less than three days before the day appointed for hearing the application, send notice of the application to every creditor who has proved his debt.

Notice to creditors.

200. In any case in which an application is made to the Court to approve of a composition or scheme, and the official receiver reports to the Court any fact, matter, or circumstance which would justify the Court in refusing to approve of the composition or scheme, such application shall be deemed to be an opposed application within the meaning of paragraph (*d*) of sub-s. 2 of s. 99 of the Act of 1883.

Opposed applications.

S. 99 (2) (*d*).

201. In every case of an application to the Court to approve of a composition or scheme, the report of the official receiver shall be filed not less than four days before the time fixed for hearing the application.

Official receiver's report to be filed.

S. 3 (7), 1890.

202. On the hearing of any application to the Court to approve of a composition or scheme, the Court shall, in addition to considering the report of the official receiver, hear the official receiver and the trustee (if any) thereon, and an appeal to the Court of Appeal shall lie at the instance of the Board of Trade, or of the trustee (if any), from any order of the Court made upon such an application.

Hearing and appeal.

203. No costs incurred by a debtor, of or incidental to an application to approve of a composition or scheme, shall be allowed out of the estate if the Court refuses to approve the composition or scheme.

Costs of application by debtor.

204.—(1) The Court before approving of a composition or scheme shall, in addition to investigating the other matters as required by the Acts, require proof that the provisions of sub-ss. (1) and (2) of s. 3 of the Act of 1890 have been complied with. An order approving of a composition or scheme shall be in the Form No. 67 in the Appendix, with such variations as circumstances may require.

Evidence and order.

(2) In the High Court the senior bankruptcy registrar, and in a County Court the registrar, shall forthwith send notice to the Board of Trade of every order made on an application to approve of a composition or scheme, and the Board of Trade shall gazette the same.

Rs. 280—1.

205. Where a composition or scheme has been duly accepted by the creditors, such composition or scheme shall not be approved by the Court unless the Court is satisfied, on the report of the official receiver, that provision is made for payment of all proper costs, charges, and

Provision in composition or scheme for costs and charges.

RULES 205—215.

expenses of and incidental to the proceedings, and all fees and percentages payable to the official receiver and the Board of Trade under the scale of fees and percentages in force for the time being.

Fee on application.

206. The fee prescribed to be charged for and in respect of an application to the Court to approve of a composition or scheme may be allowed and paid out of the estate of the debtor in any case in which there are sufficient funds in the hands of the official receiver or trustee, as the case may be, available for the purpose.

Correction of formal slips, &c.
Ss. 105 (3), 143.
Rs. 54, 350.

207. At the time a composition or scheme is approved of, the Court may correct or supply any accidental or formal slip, error, or omission therein, but no alteration in the substance of the composition or scheme shall be made.

Proceedings if scheme approved.
R. 336.

208. When a composition or scheme is approved of, the official receiver shall, on payment of all proper costs, charges, and expenses of and incidental to the proceedings, and all fees and percentages payable to the official receiver and the Board of Trade, forthwith put the debtor (or, as the case may be, the trustee under the composition or scheme, or the other person or persons to whom under the composition or scheme the property of the debtor is to be assigned) into possession of the debtor's property. The Court shall also discharge the receiving order.

Cases in which official receiver is to be trustee.

209. In every case of a composition or scheme in which a trustee is not appointed, or, if appointed, declines to act, or becomes incapable of acting, or is removed, the official receiver shall, unless and until another trustee is appointed by the creditors, be the trustee for the purpose of receiving and distributing the composition, or for the purpose of administering the debtor's property, and carrying out the terms of the composition or scheme, as the case may be.

Security by trustee under composition or scheme.

210. Where under a composition or scheme of arrangement a trustee is appointed, he shall, after the composition or scheme has been approved by the Court, give security to the satisfaction of the Board of Trade in like manner as if he were a trustee in bankruptcy. If the trustee fail to give such security within the time required, he may be removed by the Board of Trade.

Default in payment of composition.
S. 3 (14), (15), of B. A., 1890.

211. Where a composition or scheme has been approved, and default is made in any payment thereunder either by the debtor or the trustee (if any), no action to enforce such payment shall lie, but the remedy of any person aggrieved shall be by application to the Court.

Vesting of property on annulment of composition.
S. 3 (15), of B. A., 1890.

212. Where a composition or scheme is annulled, the property of the debtor shall, unless the Court otherwise directs, forthwith vest in the official receiver to whom the estate was originally assigned, without any special order being made or necessary.

213. Where a composition or scheme is annulled, the trustee under the composition or scheme shall account to the trustee under the bankruptcy for any money or property of the debtor which has come to his hands, and pay or deliver over to the said trustee any money or property which has not been duly administered.

Annulment of composition or scheme.

Dividends under composition or scheme.

214. Where under any composition or scheme provision is made for the payment of any moneys to creditors entitled thereto, and any claim, in respect of which a proof has been lodged, is disputed, the Court may, if it shall think fit, direct that the amount which would be payable upon such claim, if established, shall be secured in such manner as the Court shall direct, until the determination of the claim so disputed; and on the determination thereof, the sum so secured shall be paid as the Court may direct.

Proof of debts in compositions.
R. 209.

215. Every person claiming to be a creditor under any composition or scheme who has not proved his debt before the approval of such composition or scheme, shall lodge his proof with the trustee thereunder, if any, or, if there is no such trustee, with the official receiver,

who shall admit or reject the same. And no creditor shall be entitled to enforce payment of any part of the sums payable under a composition or scheme unless and until he has proved his debt, and his proof has been admitted.

Composition and schemes under section 23 of the Act of 1883.

216. All rules relating to compositions or schemes shall apply to compositions or schemes under s. 3 of the Act of 1890, and, so far as applicable, also to compositions or schemes under s. 23 of the Act of 1883, and s. 6 of the Act of 1890.

Statement of Affairs.

S. 16.

How made out.

S. 70 (2).

Rs. 324, 326.

217. Every debtor shall be furnished by the official receiver with instructions for the preparation of his statement of affairs. The statement of affairs (which shall be made out in duplicate, and one copy of which shall be verified) shall be in the Form No. 46 in the Appendix, with such variations or additions as circumstances may require, or in such other form as the Board of Trade may from time to time direct. The official receiver shall file in Court the verified statement of affairs submitted to him by the debtor.

Extension of time.

218. Where any debtor requires any extension of the time for the filing by him of his statement of affairs, he shall apply to the official receiver, who may, if he thinks fit, give a written certificate extending such time, which certificate shall be filed, and shall render an application to the Court under s. 16 of the Act unnecessary.

Proof of Debts.

S. 39, Sch. II.

Form of proof.

219. A creditor's proof shall be in the Form No. 72 in the Appendix, with such variations as circumstances may require.

Swearing of affidavits.

S. 135, Sch. II. (26).

B. A. (1890), s. 24.

219A. An affidavit of proof of debt may be sworn before an assistant official receiver or any clerk of an official receiver duly authorised in writing by the Court or the Board of Trade in that behalf.

Workmen's wages.

220. In any case in which it shall appear from the debtor's statement of affairs that there are numerous claims for wages by workmen and others employed by the debtor, it shall be sufficient if one proof for all such claims is made either by the debtor, or his foreman, or some other person on behalf of all such creditors. Such proof shall be in the Form No. 73 in the Appendix, and shall have annexed thereto, as forming part thereof, a schedule setting forth the names of the workmen and others, and the amounts severally due to them. Any proof made in compliance with this Rule shall have the same effect as if separate proofs had been made by each of the said workmen and others, but shall be stamped with one stamp as an ordinary proof.

Production of bills of exchange and promissory notes.

Sch. I. (11).

R. 233.

221. Where a creditor seeks to prove in respect of a bill of exchange, promissory note, or other negotiable instrument or security on which the debtor is liable, such bill of exchange, note, instrument, or security, must, subject to any special order of the Court made to the contrary, be produced to the official receiver, chairman of a meeting, or trustee, as the case may be, before the proof can be admitted either for voting or for dividend.

Time for lodging proofs.

Sch. I. (8).

See R. 222A.

222. A proof intended to be used at the first meeting of creditors shall be lodged with the official receiver not later than the time mentioned for that purpose in the notice convening the meeting, which time shall not be earlier than twelve o'clock at noon of the day but one before, nor later than twelve o'clock at noon of the day before the day appointed for such meeting.

RULES 222A—228.

222A. Rule 222 of the Bankruptcy Rules, 1886, shall be read and construed as though at the end thereof there were added the following words:—

Lodging proofs where first meeting adjourned.

A proof intended to be used at an adjournment of the first meeting (if not lodged in time for the first meeting) must be lodged not less than twenty-four hours before the time fixed for holding the adjourned meeting.

Transmission of proofs to trustee.

223. Where a trustee is appointed in any matter, all proofs of debts that have been received by the official receiver shall be handed over to the trustee. But the official receiver shall first make a list of such proofs, and take a receipt thereon from the trustee for such proofs.

Proofs to be sent by official receiver to registrar.

224. The official receiver, where no other trustee is appointed, shall, forthwith after the final payment has been made in a composition or scheme of arrangement duly approved by the Court, and in a bankruptcy after a final dividend has been declared, send to the registrar all proofs tendered in the proceeding, with a list thereof certified to be correct, distinguishing in such list the proofs which were wholly or partly admitted, and the proofs which were wholly or partly rejected.

Proofs to be sent by trustee to registrar.

225. Every trustee in bankruptcy, other than the official receiver, shall on the first day of every month, send to the registrar a certified list of all proofs, if any, received by him from the official receiver, or otherwise tendered during the month next preceding, distinguishing in such lists the proofs admitted, those rejected, and such as stand over for further consideration; and, in the case of proofs admitted or rejected, he shall transmit the proofs themselves for the purpose of being filed.

Certified lists of proofs to be sent to Board of Trade.

225A. Upon the declaration of a dividend the trustee shall forthwith transmit to the Board of Trade a list of proofs filed with the proceedings under Rule 225 of the Bankruptcy Rules, 1886. Such list shall be in the Form No. 122A or No. 122B in the Appendix, and if the proceedings are in a County Court the list shall, upon payment of the prescribed fee, be examined by the registrar, with the proofs tendered for filing, and if found correct shall be certified by the registrar. If the proceedings are in the High Court, the trustees shall, if so required by the Board of Trade, transmit to the Board of Trade office copies of all lists of proofs filed by him up to the date of declaration of the dividend.

Procedure where creditor appeals.

226. The official receiver, or, as the case may be, the trustee, shall, within three days after receiving notice from a creditor of his intention to appeal against a decision rejecting a proof, file such proof with the registrar, with a memorandum thereon of his disallowance thereof. After the appeal has been heard by the Court, the proof, unless wholly disallowed, shall be given back to the official receiver or trustee, as the case may be.

Time for admission or rejection of proof by official receiver.

Sch. II. (22—27).

R. 232 (1).

227. Subject to the power of the Court to extend the time, the official receiver as trustee, not later than fourteen days (*a*) from the latest date specified in the notice of his intention to declare a dividend, as the time within which such proofs must be lodged, shall, in writing, either admit or reject wholly or in part every proof lodged with him, or require further evidence in support thereof.

Time for admission or rejection of proof by trustee.

R. 227.

228. Subject to the power of the Court to extend the time, the trustee, other than the official receiver, within twenty-eight days after receiving a proof which has not previously been dealt with by the official receiver, shall, in writing, either admit or reject it wholly or in part, or require further evidence in support thereof. Provided that where the trustee has given notice of his intention to declare a dividend he shall within seven days after the date mentioned in such

(*a*) As amended by R. 227A, which is omitted.

notice as the latest date up to which proofs must be lodged, examine and in writing admit or reject every proof which has not been already admitted or rejected, and give notice of his decision rejecting a proof wholly or in part to the creditor affected thereby.

Notice of admission of proof.

229. Where a creditor's proof has been admitted the notice of dividend shall be sufficient notification to such creditor of such admission.

Appeal from rejection of proof. Sch. II. (24). Rs. 6, 27, 232 (3).

230. Subject to the power of the Court to extend the time, no application to reverse or vary the decision of an official receiver or trustee in rejecting a proof shall be entertained after the expiration of twenty-one days from the date of the decision complained of.

Costs of appeals from decisions as to proofs. R. 339. Ss. 58—63.

231. The official receiver shall in no case be personally liable for costs in relation to an appeal from his decision rejecting any proof wholly or in part.

Dividends.

Notice of intended dividend. Sch. II. (22). Rs. 226—231.

232.—(1) Not more than two months before declaring a dividend, the trustee shall give notice of his intention to do so to the Board of Trade in order that the same may be forthwith gazetted, and at the same time to such of the creditors mentioned in the bankrupt's statement of affairs as have not proved their debts. Such notice shall specify the latest date up to which proofs must be lodged, which shall be not less than fourteen days from the date of such notice.

(2) Where any creditor, after the date mentioned in the notice of intention to declare a dividend as the latest date upon which proofs may be lodged, appeals against the decision of the official receiver or trustee rejecting a proof, such appeal shall, subject to the power of the Court to extend the time in special cases, be commenced, and notice thereof given to the official receiver or trustee within seven days from the date of the notice of the decision against which the appeal is made, and the official receiver or trustee shall in such case make provision for the dividend upon such proof, and the probable cost of such appeal in the event of the proof being admitted. Where no appeal has been commenced within the time specified in this Rule, the trustee shall exclude all proofs which have been rejected from participation in the dividend.

Sch. II. (24). Rs. 6, 230. Ss. 60—1.

(3) Immediately after the expiration of the time fixed by this Rule for appealing against the decision of the trustee, he shall proceed to declare a dividend, and shall give notice to the Board of Trade (in order that the same may be gazetted), and shall also send a notice of dividend to each creditor whose proof has been admitted, accompanied by a statement showing the position of the estate.

(4) The notices shall be in the Forms Nos. 123, 126, and 122 in the Appendix, with such variations as circumstances may require; but the Board of Trade may from time to time alter such forms.

(5) If it becomes necessary, in the opinion of the trustee and the committee of inspection, to postpone the declaration of the dividend beyond the prescribed limit of two months, the trustee shall give a fresh notice of his intention to declare a dividend to the Board of Trade in order that the same may forthwith be gazetted; but it shall not be necessary for such trustee to give a fresh notice to such of the creditors mentioned in the bankrupt's statement of affairs as have not proved their debts. In all other respects the same procedure shall follow the fresh notice as would have followed the original notice.

Production of bills, notes, &c. Sch. I. (11).

233. Subject to the provisions of section 70 of the Bills of Exchange Act, 1882, and subject to the power of the Court in any other case on special grounds to order production to be dispensed with, every bill of exchange, promissory note, or other negotiable instrument or security, upon which proof has been made, shall be exhibited to the trustee

RULES 233—240.

before payment of dividend thereon, and the amount of dividend paid shall be endorsed on the instrument.

Dividend may be sent by post.

234. The amount of the dividend may, at the request and risk of the creditor, be transmitted to him by post.

Discharge.

S. 8 of B. A. (1890). Application.

235.—(1) A bankrupt intending to apply for his discharge under section 8 of the Act of 1890, shall produce to the registrar a certificate from the official receiver specifying the number of his creditors of whom the official receiver has notice (whether they have proved or not). The registrar shall, not less than twenty-eight days before the day appointed for hearing the application, give notice of the time and place of the hearing of the application to the official receiver and trustee, and the official receiver shall forthwith send notice thereof to the Board of Trade for insertion in the *London Gazette*.

(2) Notice of the day appointed for the hearing of the debtor's application for discharge shall be sent by the official receiver to each creditor not less than fourteen days before the day so appointed. Such notice shall be in the Form No. 61 in the Appendix.

Opposed applications.

236. In any case in which an application is made to the Court by a bankrupt for his discharge, and the official receiver reports to the Court, any fact, matter, or circumstance, which would, under the Acts, justify the Court in refusing an unconditional order of discharge, such application shall be deemed to be an opposed application within the meaning of section 99 (2) (c) of the Act of 1883.

Appeals.

237. An appeal to the Court of Appeal shall lie at the instance of the Board of Trade, and at the instance of the trustee (if any) from any order of the Court made upon an application for discharge.

Report of official receiver.

238. In every case of an application by a bankrupt for his discharge the report of the official receiver shall be filed not less than seven days before the time fixed for hearing the application.

Evidence in answer to report. S. 8 (5) of B. A., 1890.

238A. Where a bankrupt intends to dispute any statement with regard to his conduct and affairs contained in the official receiver's report, he shall, not less than two days before the hearing of the application for discharge, give notice in writing to the official receiver, specifying the statements in the report, if any, which he proposes at the hearing to dispute. Any creditor who intends to oppose the discharge of a bankrupt on grounds other than those mentioned in the official receiver's report, shall give notice of the intended opposition, stating the grounds thereof, to the official receiver not less than two days before the hearing of the application.

Costs of application.

239. A bankrupt shall not be entitled to have any of the costs of or incidental to his application for his discharge allowed to him out of his estate.

Conditional orders.

240.—(1) Where the Court grants an order of discharge conditionally upon the bankrupt consenting to judgment being entered against him by the official receiver or trustee for the balance or any part of the balance of the debts provable under the bankruptcy which is not satisfied at the date of his discharge, the order of discharge shall not be signed, completed, or delivered out until the bankrupt has given the required consent in the Form No. 64 in the Appendix. The judgment shall be entered in the Court having jurisdiction in the bankruptcy in which the order of discharge is granted, and (if entered in the High Court) shall be in the Form No. 65 in the Appendix, with such variations as circumstances may require.

(2) The registrar of a County Court in which judgment is so entered shall forthwith make a return of the judgment to the registrar of County Court judgments.

(3) If the bankrupt does not give the required consent within one month of the making of the conditional order the Court may, on the application of the official receiver or trustee, revoke the order or make such other order as the Court may think fit.

Order.

241. The order of the Court made on an application for discharge shall be dated on the day on which it is made, and shall take effect from the day on which the order is drawn up and signed; but such order shall not be delivered out or gazetted until after the expiration of the time allowed for appeal, or, if an appeal be entered, until after the decision of the Court of Appeal thereon. The order shall be in one of the Forms Nos. 62 to 63 in the Appendix, as the case may require.

Gazetting order.

242. When the time for appeal has expired, or, as the case may be, when the appeal has been decided by the Court of Appeal, the senior bankruptcy registrar of the High Court, or in a County Court the registrar, shall forthwith send notice of the order to the Board of Trade, who shall gazette the same.

Execution on judgment in case of conditional discharge. R. 240.

243.—(1) An application by the official receiver or trustee for leave to issue execution on a judgment entered pursuant to a conditional order of discharge shall be in writing, and shall state shortly the grounds on which the application is made. When the application is lodged the registrar shall fix a day for the hearing.

(2) The official receiver or trustee shall give notice of the application to the debtor not less than eight days before the day appointed for the hearing, and shall at the same time furnish him with a copy of the application.

Accounts of after-acquired property.

244. Where a bankrupt is discharged subject to the condition that judgment shall be entered against him, or subject to any other condition as to his future earnings or after-acquired property, it shall be his duty, until such judgment or condition is satisfied, from time to time to give the official receiver such information as he may require with respect to his earnings and after-acquired property and income and not less than once a year to file in the Court a statement showing the particulars of any property or income he may have acquired subsequent to his discharge.

Verification of statements of after-acquired property.

244A. Any statement of after-acquired property or income filed by a bankrupt whose discharge has been granted subject to conditions shall be verified by affidavit, and the official receiver or trustee may require the bankrupt to attend before the Court to be examined on oath with reference to the statements contained in such affidavit, or as to his earnings, income, after-acquired property or dealings. Where a bankrupt neglects to file such affidavit or to attend the Court for examination when required so to do, or properly to answer all such questions as the Court may put or allow to be put to him, the Court may, on the application of the official receiver or trustee, rescind the order of discharge. The affidavit shall be in the Form No. 56B in the Appendix, with such variations as circumstances may require.

Application for modification of order. B. A., 1890, s. 8 (2).

244B. Where after the expiration of two years from the date of any order made upon a bankrupt's application for a discharge, the bankrupt applies to the Court to modify the terms of the order on the ground that there is no reasonable probability of his being in a position to comply with the terms of such order, he shall give fourteen days' notice of the day fixed for hearing the application to the official receiver and to all his creditors.

Note.—See also Rule of 1891, *post.*

RULES 245—253.

Proxies and Voting Letters.

B. A., 1890, s. 22.

245.—(1) A general proxy shall be in the Form No. 75, a special proxy shall be in the Form No. 76 in the Appendix.

Form and filing of proxies.

(2) A proxy shall be lodged with the official receiver or trustee not later than four o'clock on the day before the meeting or adjourned meeting, at which it is to be used.

(3) As soon as a proxy or voting letter has been used it shall be filed with the proceedings in the matter.

Signature of proxy.

246. A proxy given by a creditor shall be deemed to be sufficiently executed if it is signed by any person in the employ of the creditor having a general authority to sign for such creditor, or by the authorised agent of such creditor if resident abroad; such authority shall be in writing, and shall be produced to the official receiver, if required.

Filling in when creditor blind, &c.

247. The proxy of a creditor blind or incapable of writing may be accepted if such creditor has attached his signature or mark thereto in the presence of a witness, who shall add to his signature his description and residence; and provided that all insertions in the proxy are in the handwriting of the witness, and such witness shall have certified at the foot of the proxy that all such insertions have been made by him at the request of the creditor and in his presence before he attached his signature or mark.

Minors not to be proxies.

248. No person shall be appointed a general or special proxy who is a minor.

Meetings of Creditors.

S. 15, Sch. I.

Notice to debtor of first meeting.

Ss. 24, 70 (1*c*).

249.—(1) The official receiver shall give three days' notice to the debtor of the time and place appointed for the first meeting of creditors. The notice, which shall be in Form No. 85 in the Appendix, may be either delivered to him personally or sent to him by prepaid post letter, as may be convenient. It shall nevertheless be the duty of the debtor to attend such first meeting although the notice is not sent to or does not reach him.

(2) A notice to attend subsequent meetings shall be in the like form, with such variations as circumstances may require.

Notice to Board of Trade and creditors of first meeting.

Sch. I. (1—4).

250. The official receiver shall fix the day for the first meeting, and shall forthwith give notice thereof to the Board of Trade, who shall gazette the same. The notice to creditors shall be in Form No. 78 in the Appendix, with such variations as circumstances may require.

Notice of other meetings.

Sch. I. (6).

251. The notices of subsequent meetings to be issued to creditors by the official receiver or trustee shall be in the Form No. 101 in the Appendix, with such variations as circumstances may require. Where no special time is prescribed the notices shall be sent off not less than three days before the day appointed for the meeting.

Non-reception of notice by creditor.

Sch. I. (3).

252. Where a meeting of creditors is called by notice, the proceedings had and resolutions passed at such meeting shall, unless the Court otherwise orders, be valid, notwithstanding that some creditors shall not have received the notice sent to them.

Notice to official receiver of creditors' meetings.

252A. Where a trustee summons a meeting of creditors he shall send to the official receiver a copy of the notice convening the meeting.

Proof of notice.

253. A certificate by the official receiver or other officer of the Court, or by the clerk of any such person, or an affidavit by the trustee or his solicitor, or the clerk of either of such persons, that the notice of any meeting of creditors or sitting of the Court has been duly posted, shall be sufficient evidence of such notice having been duly sent to the person to whom the same was addressed. The certificate and the affidavit shall be in the Forms Nos. 84A, 102, or 102A in the Appendix, with such variations as circumstances may require.

254. Where, on the request of creditors, the official receiver or trustee calls a meeting of creditors, the cost of summoning such meeting, including all disbursements for printing, stationery, postage, and the hire of room for meeting, shall be calculated at the following rates for each creditor to whom notice is required to be sent:—2*s.* per creditor for the first 20 creditors; 1*s.* per creditor for the next 30 creditors; 6*d.* per creditor for any number of creditors after the first 50. Cost of creditors' meetings.

255. The official receiver, or as the case may be, the trustee, shall send to the registrar of the Court in which the matter is pending a copy, certified by him, of every resolution of a meeting of creditors. Copy of resolution for registrar.

256. Where a meeting of creditors is adjourned the adjourned meeting shall be held at the same place as the original place of meeting, unless in the resolution for adjournment another place is specified. Sch. I. (25). Adjournment. Sch. I. (24).

257. In calculating a quorum of creditors present at a meeting those persons only who are entitled to vote at the meeting shall be reckoned. Quorum. Sch. I. (23).

Proceedings by Company or Co-partnership.

258. A bankruptcy petition against, or bankruptcy notice to, any debtor to any company or co-partnership duly authorised to sue and be sued in the name of a public officer or agent of such company or co-partnership, may be presented by or sued out by such public officer or agent as the nominal petitioner for and on behalf of such company or co-partnership, on such public officer or agent filing an affidavit stating that he is such public officer or agent, and that he is authorised to present or sue out such petition or bankruptcy notice. Public officer or agent of company, &c. S. 148.

Proceedings by or against Firm. Ss. 115, 148.

259. Where any notice, declaration, petition, or other document requiring attestation is signed by a firm of creditors or debtors in the firm name, the partner signing for the firm shall add also his own signature, *e.g.*, "Brown & Co. by James Green, a partner in the said firm." Attestation of firm signature.

260. Any notice or petition for which personal service is necessary shall be deemed to be duly served on all the members of a firm if it is served at the principal place of business of the firm in England, on any one of the partners, or upon any person having at the time of service the control or management of the partnership business there. Service on firm. S. 4 (2).

261. Where a firm of debtors file a declaration of inability to pay their debts or bankruptcy petition, the same shall contain the names in full of the individual partners, and if such declaration or petition is signed in the firm name the declaration or petition shall be accompanied by an affidavit made by the partner who signs the declaration or petition, showing that all the partners concur in the filing of the same. Debtor's petition by firm. S. 4 (1 *f*). R. 135.

262. A receiving order made against a firm shall operate as if it were a receiving order made against each of the persons who at the date of the order is a partner in that firm. Receiving order against firm.

263. In cases of partnership, the debtors shall submit a statement of their partnership affairs, and each debtor shall submit a statement of his separate affairs. Statement of affairs. S. 16. R. 217.

264. No order of adjudication shall be made against a firm in the firm name, but it shall be made against the partners individually. Adjudication against partners. S. 20.

RULES 265—272.

Joint and Separate Estates.

First meeting. Sch. I. (13).

265. Where a receiving order is made against a firm, the joint and separate creditors shall collectively be convened to the first meeting of creditors.

Acceptance of composition, &c., by joint and separate creditors.

266. The joint creditors and each set of separate creditors, may severally accept compositions or schemes of arrangement. So far as circumstances will allow, a proposal accepted by joint creditors may be approved in the prescribed manner, notwithstanding that the proposals or proposal of some or one of the debtors made to their or his separate creditors may not be accepted.

Voting on composition.

267. Where proposals for compositions or schemes are made by a firm, and by the partners therein individually, the proposals made to the joint creditors shall be considered and voted upon by them apart from every set of separate creditors; and the proposal made to each separate set of creditors shall be considered and voted upon by such separate set of creditors apart from all other creditors. Such proposals may vary in character and amount. Where a composition or scheme is approved, the receiving order shall be discharged (*a*) only so far as it relates to the estate, the creditors of which have confirmed the composition or scheme.

Adjudication: trustee. R. 270.

268. On the adjudication in bankruptcy of a partnership the trustee appointed by the joint creditors, or by the Board of Trade under section 21 (6) or section 87 (3) of the Act, as the case may be, shall be the trustee of the separate estates. Each set of separate creditors may appoint its own committee of inspection; but if any set of separate creditors do not appoint a separate committee, the committee (if any) appointed by the joint creditors shall be deemed to have been appointed also by such separate creditors.

Separate firms. S. 40 (3).

269. If any two or more of the members of a partnership constitute a separate and independent firm, the creditors of such last-mentioned firm shall be deemed to be a separate set of creditors, and to be on the same footing as the separate creditors of any individual member of the firm. And where any surplus shall arise upon the administration of the assets of such separate or independent firm, the same shall be carried over to the separate estates of the partners in such separate and independent firm according to their respective rights therein.

Apportionment of trustee's remuneration. R. 268.

270. Where joint and separate estates are being administered, the remuneration of the trustee in respect of the administration of the joint estate may be fixed by the creditors, or (if duly authorised) by the committee of inspection of such joint estate, and the remuneration of the trustee in respect of the administration of any separate estate may be fixed by the creditors, or (if duly authorised) by the committee of inspection of such separate estate.

Lunatics.

Lunatics.

271. Where any debtor or creditor is a lunatic not so found by inquisition, the Court may appoint such person as the Court shall think fit to do any act required by the Act or Rules to be done by such debtor or creditor.

PART III.

Special Procedures.

Small Bankruptcies.

Ss. 121—2.

Application for order.

272. An application by the official receiver that the estate of a debtor may be ordered to be administered in a summary manner shall be in the Form No. 44 in the Appendix, with such variations as circumstances may require.

(*a*) As amended by R. 267A, which is omitted.

RULE 273.

Summary administration.

273. Where an estate is ordered to be administered in a summary manner, under section 121 of the Act, the provisions of the Acts and Rules shall, subject to any special direction of the Court, be modified as follows, namely :—

(1) There shall be no advertisement of any proceedings in a local paper unless the Board of Trade otherwise direct.

(2) The title of every document in the proceedings subsequent to the making of the order for summary administration shall have inserted thereon the words "Summary Case."

(3) All questions of law and fact shall be determined by the Court having jurisdiction in the matter, and no application for a jury shall be entertained. S. 102 (3).

(4) If no proposal for a composition or scheme is lodged with the official receiver within the time specified for that purpose in section 3 of the Act of 1890, or within such time thereafter as the official receiver may fix, or if the official receiver satisfies the Court that the debtor has absconded, or that the debtor does not intend to propose a composition or scheme, or that the composition or scheme proposed is not reasonable or calculated to benefit the general body of creditors, the Court may forthwith adjudge the debtor bankrupt. A report by the official receiver under this paragraph shall be *primâ facie* evidence of the facts stated therein.

(5) If during or at the conclusion of the public examination of the debtor it appears to the Court that a composition or scheme ought not to be sanctioned by reason of the conduct of the debtor, the Court may forthwith adjudge the debtor bankrupt.

(6) All payments shall, unless the Board of Trade otherwise orders, be made into and out of the Bank of England.

(7) The first meeting of creditors may, where it is expedient, be held on the day appointed for the public examination, or on any other day fixed by the official receiver. If a quorum of creditors be not present, it shall not be necessary to adjourn the meeting.

(8) Meetings of creditors shall, unless the official receiver for special reasons otherwise determines, be held in the town or place in which the Court usually holds its sittings, or in which the office of the official receiver is situate.

(9) On an application by the bankrupt for his discharge the certificate of the official receiver shall not include, nor shall notice be sent to creditors whose debts do not exceed £2.

(10) In lieu of the copy of the account to be filed with the Court, as prescribed by section 78 (4) of the Act of 1883, a statement showing the position of the estate analogous, as nearly as may be, to that prescribed by Form No. 122 in the Appendix, shall be filed.

(11) Notices of meetings, other than of first meetings, or of sittings of the Court, shall only be sent to creditors whose debts or claims exceed the sum of £2.

(12) The time mentioned in section 58 (2) of the Act of 1883 shall be extended to six months.

(13) The estate shall be realised with all reasonable despatch, and, where practicable, distributed in a single dividend when realised.

(14) The costs or charges of any person employed by the official receiver other than of a solicitor may be paid and allowed without taxation where such costs or charges are within the prescribed scale: provided that the Board of Trade may require such costs or charges to be taxed by the taxing officer.

RULES 274—279A.

ADMINISTRATION OF ESTATE OF PERSON DYING INSOLVENT.

S. 125. Form of petition.

274. A creditor's petition under section 125 of the Act shall be in the Form No. 11 in the Appendix, with such variations as circumstances may require, and shall be verified by affidavit.

Gazetting.

275. Where an administration order under section 125 of the Act is made, such order shall be gazetted and advertised in the same manner in all respects as an order of adjudication is gazetted and advertised.

Service.

276.—(1) The petition shall, unless the Court otherwise directs, be served on each executor who has proved the will, or, as the case may be, on each person who has taken out letters of administration. The Court may also, if the Court thinks fit, order the petition to be served on any other person.

Rs. 153—6.

(2) Service shall be proved in the same way as is provided in the case of an ordinary creditor's petition, and the petition shall be heard in the like manner.

Administration order.

277. An administration order under section 125 of the Act shall be in the Form No. 42 in the Appendix, with such variations as circumstances may require.

Duties of executor, &c.

278. When an administration order under section 125 of the Act has been made it shall be the duty of the executor or legal personal representative of the deceased debtor to lodge with the official receiver forthwith (in duplicate) an account of the dealings with, and administration of (if any), the deceased's estate by such executor or legal personal representative, and such executor or legal personal representative shall also furnish forthwith in duplicate a list of the creditors, and a statement of the assets and liabilities, and such other particulars of the affairs of the deceased as may be required by the official receiver. Every account, list, and statement to be made under this Rule shall be made and verified as nearly as may be in accordance with the practice for the time being of the Chancery Division of the High Court.

The expense of preparing, making, verifying, and lodging any account, list, and statement under this Rule, shall, after being taxed, be allowed out of the estate, upon production of the necessary allocatur.

Executor *de son tort.*

279. In any case in which an administration order under section 125 of the Act has been made, and it appears to the Court, on the report of the official receiver, that no executor or legal personal representative exists, the account, list, and statement mentioned in the last preceding Rule shall be made, verified, and lodged by such person as in the opinion of the Court, upon such report, may have taken upon himself the administration of, or may otherwise have intermeddled with, the property of the deceased, or any part thereof.

Rules as to administration of estate of deceased insolvent.

279A. In proceedings under an order for the administration of the estate of a person dying insolvent, where a meeting of creditors is summoned for the appointment of a trustee:

(1) The provisions of Schedule I. of the Act of 1883 relating to the mode of summoning a meeting of creditors, and to the persons entitled to vote at a meeting;

(2) The provisions of the Bankruptcy Rules, 1886 and 1890, which refer to creditors, meetings of creditors, trustees, and committees of inspection; and

(3) Where the property is not likely to exceed in value the sum of three hundred pounds, the provisions of section 121 of the Act of 1883,—

shall, so far as applicable, apply as if the proceedings were under a receiving order and order of adjudication.

PART IV.

RULES 280—287.

OFFICERS, TRUSTEES, AUDIT, &c.

Gazetting.

S. 132.

280. All notices requiring publication in the *London Gazette* shall be gazetted by the Board of Trade. R. 17. Gazetting notices.

281. Where any receiving order is amended, and also in any case in which any matter which has been gazetted has been amended or altered, or in which a matter has been wrongly or inaccurately gazetted, the Board of Trade shall re-gazette such order or matter, with the necessary amendments and alterations in the prescribed form, at the expense of the estate or otherwise, as the Board of Trade may direct. Re-gazetting.

Books to be kept and Returns to be made by Registrars.

S. 131.

282. When a receiving order, or an order of adjudication, or an order fixing the public examination of a debtor, or an order for administration under section 121 or under section 125, or an order on an application to sanction a composition or scheme, or an order annulling a composition or scheme, or an order annulling an adjudication, is made, or an order on an application for discharge is delivered out, in the High Court the senior bankruptcy registrar, and in a County Court the registrar, shall forthwith give notice thereof to the Board of Trade. The notices may be according to Form No. 174 in the Appendix, or in such other form as the Board of Trade may from time to time require. Notice of orders to Board of Trade.

283. The senior bankruptcy registrar of the High Court, and every registrar of a County Court having jurisdiction in bankruptcy, shall keep books according to the Forms Nos. 171, 172, and 173 in the Appendix, and the particulars given under the different heads in such books shall be entered forthwith after the proceedings shall be had. Books to be kept by registrars.

284. The registrars shall make and transmit to the Board of Trade such extracts from their books, and shall furnish such information and returns as the Board of Trade may from time to time require. Extracts and returns.

Accounts and Audit.

Ss. 78—81.

285. The official receiver, until a trustee is appointed, and thereafter the trustee, shall keep a book to be called the "Record Book," in which he shall record all minutes, all proceedings had, and resolutions passed at any meeting of creditors, or of the committee of inspection, and all such matters as may be necessary to give a correct view of his administration of the estate, but he shall not be bound to insert in the record any document of a confidential nature (such as the opinion of counsel on any matter affecting the interest of the creditors), nor need he exhibit such documents to any person other than a member of the committee of inspection. Record book.

286. The official receiver, until a trustee is appointed, and thereafter the trustee, shall keep a book to be called the "Cash Book" (which shall be in such form as the Board of Trade may from time to time direct), in which he shall (subject to the provisions of these Rules as to trading accounts) enter from day to day the receipts and payments made by him. Cash book. S. 80. Rs. 308, 314.

287. The trustee shall submit the record book and cash book, together with any other requisite books and vouchers, to the committee of inspection (if any) when required, and not less than once every three months. Books to be submitted to committee of inspection. R. 336 (4).

RULES 288—296.

288. The committee of inspection shall, not less than once every three months, audit the cash book and certify therein under their hands the day on which the said book was audited. The certificate shall be in the Form No. 128 in the Appendix, with such variations as circumstances may require.

Audit of cash book.
R. 336 (4).

289.—(1) Every trustee shall, at the expiration of six months from the date of the receiving order, and at the expiration of every succeeding six months thereafter until his release, transmit to the Board of Trade a duplicate copy of the cash book for such period, together with the necessary vouchers and copies of the certificates of audit by the committee of inspection. He shall also forward with the first accounts a summary of the debtor's statement of affairs, in such form as the Board of Trade may direct, showing thereon in red ink the amounts realised, and explaining the cause of the non-realisation of such assets as may be unrealised.

Board of Trade audit of trustee's account.
R. 336 (4).
Ss. 78, 91, 102 (5).

(2) When the estate has been fully realised and distributed, or, if the adjudication is annulled, the trustee shall forthwith send in his accounts to the Board of Trade, although the six months may not have expired.

(3) The accounts sent in by the trustee shall be certified and verified by him according to the Form No. 129 in the Appendix.

290. When the trustee's account has been audited, the Board of Trade shall certify that the account has been duly passed, and thereupon the duplicate copy, bearing a like certificate, shall be transmitted to the registrar, who shall file the same with the proceedings in the bankruptcy.

Copy of accounts to be filed.
S. 78.
R. 273 (18).

291. Where a trustee has not since the date of his appointment or since the last audit of his accounts, as the case may be, received or paid any sum of money on account of the debtor's estate, he shall, at the period when he is required to transmit his estate account to the Board of Trade, forward to the Board an affidavit of no receipts or payments.

Affidavit of no receipts.

292. Upon a trustee resigning, or being released or removed from his office, he shall deliver over to the official receiver, or, as the case may be, to the new trustee, all books kept by him, and all other books, documents, papers, and accounts in his possession relating to the office of trustee.

Proceedings on resignation, &c., of trustee.
Ss. 82, 86.
Rs. 302—4, 309—11.

293. Where a receiving order has been made against debtors in partnership, distinct accounts shall be kept of the joint estate and of the separate estate or estates, and no transfer of a surplus from a separate estate to the joint estate on the ground that there are no creditors under such separate estate shall be made until notice of the intention to make such transfer has been gazetted.

Joint and separate estates accounts.
S. 40 (3).
R. 128.

294. The Board of Trade may, on the application of the official receiver, direct that the debtor's books of account and other documents given up by him may be sold, destroyed, or otherwise disposed of.

Disposal of bankrupt's books and papers.
Rs. 292, 349.

295. Where property forming part of a debtor's estate is sold by the trustee through an auctioneer or other agent, the gross proceeds of the sale shall be paid over by such auctioneer or agent, and the charges and expenses connected with the sale shall afterwards be paid to such auctioneer or agent on the production of the necessary allocatur of the taxing officer. Every trustee, by whom such auctioneer or agent is employed, shall be accountable for the proceeds of every such sale.

Expenses of sales.
S. 56 (1).

296. In any case in which, under the provisions of section 64 of the Act, a trustee makes an allowance to a bankrupt out of his property, such allowance, unless the creditors by special resolution determine otherwise, shall be in money, and the amount allowed shall be duly entered in the trustee's accounts.

Allowance to debtor.
R. 64 (2).
S. 325.

Trustees.

297. A certificate by the Board of Trade, certifying the appointment of a trustee, shall be in the Form No. 115 in the Appendix, with such variations as circumstances may require. Form of certificate of appointment. Ss. 21, 54, 138.

298. When the appointment of a trustee is certified, notice of his appointment shall forthwith be gazetted by the Board of Trade; and a certificate of the appointment shall be sent by the Board of Trade to the registrar. The trustee shall also forthwith insert notice of his appointment in a local paper. The expense of such gazetting and notice shall be borne by the trustee, and may be charged by him to the estate. Notice of appointment.

299.—(1) Where the Board of Trade objects to the appointment of a trustee, and is required by a majority in value of the creditors to notify the objection to the High Court, the requisition shall be in the Form No. 114 in the Appendix, with such variations as circumstances may require. On receipt of such requisition the Board of Trade shall forthwith transmit a copy thereof to the senior bankruptcy registrar of the High Court, who shall fix a time for the hearing of the matter. At the hearing the person objected to, and every creditor and the Board of Trade, shall be entitled to be heard. Notification of objection to High Court. S. 21 (3).

(2) The Board of Trade may also with the copy of the requisition communicate to the Court the grounds of its objections. Any report so made by the Board of Trade shall be *primâ facie* evidence of the statements therein contained. S. 140.

300. It shall be a sufficient objection to the appointment of a trustee that he has not complied with the requirements of section 162 of the Act, or of any order of the Board of Trade made thereunder in respect of any matter as to which he was under an obligation to comply. Trustee not accounting under s. 162. S. 21.

301. It shall be a sufficient reason for refusing to certify the appointment of a person as trustee that in any other proceeding under the Act such person has either been removed under section 86 (2) of the Act from the office or trustee, or has failed or neglected, without good cause shown by him, to render his accounts for audit for two months after the date by which the same should have been rendered. Removal of trustee. Rs. 302—3, 311.

302. Where a trustee or special manager has given security in the prescribed manner, but fails to keep up such security, the Board of Trade may, if they think fit, remove him from his office. Removal for failing to keep up security. Rs. 301, 303, 311, 331.

303. Where a trustee is removed by the Board of Trade, notice of the order removing him shall at once be transmitted by the Board of Trade to the Registrar of the Court, who shall file the notice with the proceedings in the matter and give written notice thereof to the official receiver. The Board of Trade shall also cause a notice of the order to be gazetted. Removal by Board of Trade. S. 86, R. 292.

304. A trustee intending to resign his office shall call a meeting of creditors to consider whether his resignation shall be accepted or not, and shall give not less than seven days' notice of the meeting to the official receiver. Notice of resignation. S. 84. R. 292.

305. The creditors, or, as the case may be, the committee of inspection, in voting the remuneration of the trustee, shall distinguish between the commission or per-centage payable on the amount realised, and the commission or per-centage payable on the amount distributed in dividend. Rate of remuneration. S. 72. Rs. 306—7.

306. Except as provided by the Act or Rules, no trustee shall be entitled to receive out of the estate any remuneration for services rendered to the estate, except the remuneration to which under the Act and Rules he is entitled as trustee. Limit of remuneration.

RULES 307—315.

Remuneration when appointed by Board of Trade.
Rs. 305—6.

307. In any case in which, under the provisions of sub-section 6 of section 21, or sub-section 3 of section 87 of the Act, the Board of Trade appoint a trustee, the trustee shall receive out of the estate such remuneration as the Board of Trade shall determine.

Trustee carrying on business.
S. 57.
Rs. 286, 314, 336 (4).

308.—(1) Where the trustee carries on the business of the debtor, he shall keep a distinct account of the trading, and shall incorporate in the cash book the total weekly amount of the receipts and payments on such trading account.

(2) The trading account shall from time to time, and not less than once in every month, be verified by affidavit, and the trustee shall thereupon submit such account to the committee of inspection (if any), or such member thereof as may be appointed by the committee for that purpose, who shall examine and certify the same.

Application for release.
S. 82.
Rs. 292, 304.

309. A trustee before making application to the Board of Trade for his release shall give notice of his intention so to do in the Form No. 138 in the Appendix, to all the creditors of the debtor who have proved their debts, and to the debtor, and shall send with such notice a summary of his receipts and payments as trustee in the Form No. 122 in the Appendix: Provided that where such application is made upon the trustee ceasing to act by reason of a composition having been approved under section 23 of the Act, such notice and summary shall be sent to the debtor only.

Gazette of release.
Rs. 280—1, 309.

310. Where the Board of Trade have granted to a trustee his release a notice of the order granting such release shall be gazetted. The trustee shall be required to provide the requisite stamp fee, which may be charged to the estate.

Delivery of books, &c., on release of trustee.
R. 292.

310A. The release of a trustee shall not take effect unless and until he has delivered over to the official receiver all the books, papers, documents, and accounts which, by the Bankruptcy Rules, 1886, he is required to deliver over on his release.

Meeting to consider conduct of trustee.
S. 86.
Rs. 292, 302—3, 319.

311. Where one-fourth in value of the creditors desire that a general meeting of the creditors may be summoned to consider the propriety of removing the trustee, such meeting may be summoned by a member of the committee of inspection, or by the official receiver on the deposit of a sum sufficient to defray the expenses of summoning such meeting.

Authority for account at local bank.
S. 74 (4).
R. 340.

312. Application by a committee of inspection for authority to the trustee to make his payments into and out of a local bank shall be in Form No. 136 in the Appendix, and the authority shall be in Form No. 137 in the Appendix, with such variations as circumstances may require.

Application for directions.
S. 89 (3).
Rs. 332—4.

313. Where a trustee desires to apply to the Court for directions in any matter, he may file an application in the Form No. 117 in the Appendix. The Court shall then hear the application, or fix a day for hearing it, and direct the trustee to apply by motion.

Creditor may obtain copy of trustee's accounts.
S. 80.
Rs. 285—8, 308.

314. Any creditor who has proved his debt, may apply to the trustee for a copy of the accounts (or any part thereof) relating to the estate as shown by the cash book up to date, and on paying for the same at the rate of threepence per folio he shall be entitled to have such copy accordingly.

Statements of accounts to be furnished to creditors.
S. 17 of B. A., 1890.

315. Where in pursuance of section 17 of the Act of 1890 the official receiver or trustee is required to transmit to creditors a statement of the accounts, such statement shall be in the Form No. 132A in the Appendix, with such variations as circumstances may require; and the cost of furnishing and transmitting such statement shall be calculated at the rate of threepence per folio for each statement where the creditors do not exceed 10, and where the creditors exceed 10, a shilling per folio, for the preparation of the statement and the actual cost of printing.

316. Neither the trustee nor any member of the committee of inspection of an estate shall, while acting as trustee or member of such committee, except by leave of the Court, either directly or indirectly, by himself or any partner, clerk, agent, or servant, become purchaser of any part of the estate. Any such purpose made contrary to the provisions of this Rule may be set aside by the Court on the application of the Board of Trade or any creditor.

Dealings with estate.
Ss. 56, 57.

316A.—(1) Where the trustee carries on the business of the debtor, he shall not without the express sanction of the Court purchase goods for the carrying on of such business from his employer (if any), or from any person whose connection with the trustee is of such a nature as would result in the trustee obtaining any portion of the profit (if any) arising out of the transaction.

Trustee not to purchase from his employer or partner without Court's sanction.

(2) In any case in which the sanction of the Court is obtained under this Rule or under Rule 317 of the Bankruptcy Rules, 1886, the cost of obtaining such sanction shall be borne by the person in whose interest such sanction is obtained, and shall not be payable out of the debtor's estate.

317. No member of a committee of inspection of an estate shall, except under and with the sanction of the Court, directly or indirectly, by himself or any employer, partner, clerk, agent, or servant, be entitled to derive any profit from any transaction arising out of the bankruptcy, or to receive out of the estate any payment for services rendered by him in connection with the administration of the estate, or for any goods supplied by him to the trustee for or on account of the estate. If it appears to the Board of Trade that any profit or payment has been made contrary to the provisions of this Rule they may disallow such payment or recover such profit, as the case may be, on the audit of the trustee's account.

Committee of inspection.
S. 22.
B. A., 1890, s. 5.

317A. Where the sanction of the Court under Rule 317 of the Bankruptcy Rules, 1886, to a payment to a member of a committee of inspection for services rendered by him in connection with the administration of the estate is obtained, the order of the Court shall specify the nature of the services, and shall only be given where the service performed is of a special nature. No payment shall, under any circumstances, be allowed to a member of a committee for services rendered by him in the discharge of the duties attaching to his office as a member of such committee.

Sanction of payments to members of committee of inspection.

318.—(1) Where a debtor is adjudged bankrupt, and a trustee is appointed, the official receiver shall forthwith put the trustee into possession of all property of the bankrupt of which the official receiver may be possessed; provided that such trustee shall have, before the estate is handed over to him by the official receiver, discharged any balance due to the official receiver, on account of fees, costs, and charges properly incurred by him and payable under the Act, and on account of all advances properly made by him in respect of the estate, together with interest on such advances at the rate of four pounds per cent. per annum, and shall have discharged or undertaken to discharge all guarantees which have been properly given by the official receiver for the benefit of the estate; and the trustee shall pay all fees, costs and charges of the official receiver which may not have been discharged by the trustee before being put into possession of the property of the bankrupt, and whether incurred before or after he has been put into such possession.

Discharge of costs, &c., before estate handed over to trustee.
S. 54 (2).
R. 208.

(2) The official receiver shall be deemed to have a lien upon the estate until such balance shall have been paid, and such guarantees and other liabilities shall have been discharged.

R. 339 (5).

(3) It shall be the duty of the official receiver, if so requested by the trustee, to communicate to the trustee all such information

RULES 318—320.

respecting the bankrupt and his estate and affairs as may be necessary or conducive to the due discharge of the duties of the trustee.

Meetings of creditors to consider conduct of trustee. R. 311.

319. Where the Board of Trade is of opinion that any act done by a trustee or any resolution passed by a committee of inspection should be brought to the notice of the creditors, for the purpose of being reviewed or otherwise, the official receiver may summon a meeting of creditors accordingly to consider the same, and the expenses of summoning such meeting shall be paid by the trustee out of any available assets under his control.

Disclaimer of Lease.

Disclaimer of lease. S. 55. B. A., 1890, s. 13.

320.—(1) A lease may be disclaimed without the leave of the Court in any of the following cases, viz. :—

i. Where the bankrupt has not sub-let the demised premises or any part thereof or created a mortgage or charge upon the lease; and

(*a*) The rent reserved and real value of the property leased, as ascertained by the property tax assessment, are less than £20 per annum; or

(*b*) The estate is administered under the provisions of section 121 of the Act of 1883; or

(*c*) The trustee serves the lessor with notice of his intention to disclaim, and the lessor does not within seven days after the receipt of such notice give notice to the trustee requiring the matter to be brought before the Court.

ii. Where the bankrupt has sub-let the demised premises or created a mortgage or charge upon the lease, and the trustee serves the lessor and the sub-lessee or the mortgagees with notice of his intention to disclaim, and neither the lessor nor the sub-lessee or the mortgagees, or any of them, within 14 days after the receipt of such notice, require or requires the matter to be brought before the Court.

(2) The notices shall be in the Forms 119A and 119B in the Appendix, with such variations as circumstances may require.

(3) Except as provided by this rule, the disclaimer of a lease without the leave of the Court shall be void.

(4) Where a trustee disclaims a leasehold interest he shall forthwith file the disclaimer with the proceedings in the Court; and the disclaimer shall contain particulars of the interest disclaimed, and a statement of the persons to whom notice of the disclaimer has been given. Until the disclaimer is filed by the trustee the disclaimer shall be inoperative.

(5) Where in pursuance of notice by the trustee of his intention to disclaim a leasehold interest, the lessor, sub-lessee, or mortgagee requires the trustee to apply to the Court for leave to disclaim, the costs of the lessor, sub-lessee, or mortgagee shall not be allowed out of the estate of the bankrupt except in cases in which the Court is satisfied that such application was necessary in order to do justice between the parties.

(6) A disclaimer made without leave of the Court under this Rule shall not be void or otherwise affected on the ground only that the notice required by this Rule has not been given to some person who claims to be interested in the demised property.

(7) Where any person claims to be interested in any part of the property of the bankrupt burdened with onerous covenants, he shall, at the request of the official receiver or trustee, furnish a statement of the interest so claimed by him.

Official Receivers.

RULES 321—325.

321.—(1) Judicial notice shall be taken of the appointment of the official receivers appointed by the Board of Trade. Ss. 66—71.

(2) When the Board of Trade, under the powers given by section 67 of the Act, appoints any person to act as deputy for, or in the place of, an official receiver, notice thereof shall be given by letter to the registrar of the Court to which such official receiver is or was attached. The letter shall specify the duration of such acting appointment. Appointment. S. 67. R. 329.

(3) Any person so appointed shall, during his tenure of office, have all the status, rights and powers, and be subject to all the liabilities, of an official receiver.

322.—(1) An official receiver may be removed from his office by an order of the Board of Trade. Notice of an order removing an official receiver shall be communicated by letter to the registrar of the Court to which the official receiver was attached. Removal.

(2) Where an official receiver is removed, dies, or resigns, all estates, rights and powers vested in him shall, without any conveyance or transfer, vest in such official receiver as the Board of Trade may appoint. S. 66 (1).

323. *Annulled.*

323A. When there are two or more official receivers attached to the district of the same Court the estates shall be assigned to such of them and in such manner as the Board of Trade shall by any general or special direction require. Provided that the Board of Trade may at any time require that an estate which has been assigned to one of the official receivers of the district be transferred either permanently or for special purposes of administration to one of the other official receivers. In such case the registrar shall transfer the receivership of that estate to the official receiver designated by the Board of Trade. The order of transfer shall be in the Form No. 176 in the Appendix. Assignment of estates to official receivers.

323B. When there are two or more official receivers attached to the district of the same Court, any one of them shall (subject to the directions and control of the Board of Trade) have power without any transfer of the receivership of an estate to take and perform any business and duties of any other receiver. Power of one receiver to take the business of another.

323C. In the absence of the official receiver to whom an estate has been assigned, any officer of the Board of Trade duly authorised for the purpose by the Board of Trade, and any clerk of the official receiver duly authorised by him in writing, may by leave of the Court act on behalf of the official receiver, and take part for him in the public examination of the debtor, in any examination under the twenty-seventh section of the Act of 1883, and on any unopposed application to the Court. Officers of Board of Trade and clerks of official receivers in certain cases to act for official receivers.

324.—(1) As soon as the official receiver receives notice that he has been appointed to the receivership of an estate, he shall furnish the debtor with a copy of instructions for the preparation of his statement of affairs. The instructions shall be in Form No. 46 in the Appendix, with such variations or additions as circumstances may require. Duties as to debtor's statement of affairs. Ss. 16, 70 (2). Rs. 125, 217, 263, 326, 338.

(2) The official receiver or some person deputed by him shall also forthwith hold a personal interview with the debtor for the purpose of investigating his affairs and determining whether the estate should be administered under section 121 of the Act.

(3) It shall be the duty of the debtor to attend at such time and place as the official receiver may appoint. Ss. 24 (2), 102 (5).

325. Subject to any general or special directions which the Board of Trade may give, the official receiver, while in the possession of the property of a debtor, may make him such allowance out of his property for the support of himself and his family as may be just. In fixing Subsistence allowance to debtor. S. 64 (2). R. 296.

RULES 325—336.

the amount of such allowance the assistance rendered by the debtor in the management of his business or affairs may be taken into account.

Special report as to person employed to assist debtor. R. 125.

326. Whenever, under the powers given by section 70 of the Act, the official receiver employs any person to assist the debtor in the preparation of his statement of affairs, he shall forthwith report the matter by letter to the Board of Trade, justifying his action therein and specifying the remuneration to be allowed to such person.

Use of proxies by deputy. Sch. I. Rs. 245—8.

327. Where an official receiver who holds any proxies cannot conveniently attend any meeting of creditors, at which such proxy or proxies might be used, he may depute some person in his employment or under his official control, or some officer of the Board of Trade, by writing under his hand, to attend such meeting and use such proxies on his behalf, and in such manner as he may direct.

Personal performance of duties. Rs. 327, 329.

328. The Board of Trade may, by general or special directions, determine what acts or duties shall be performed by the official receiver in person, and in what cases he may discharge his functions through the agency of his clerks or other persons in his regular employ, or under his official control.

Assistant official receivers. Rs. 321—2.

329. An assistant official receiver, appointed by the Board of Trade, shall be an officer of the Court, like the official receiver to whom he is assistant, and, subject to the directions of the Board of Trade, he may represent the official receiver in all proceedings in Court, or in any administrative or other matter. Judicial notice shall be taken of the appointment of an assistant official receiver, and he may be removed in the same manner as is provided in the case of an official receiver.

Registrar to act in sudden emergency.

330. In any case of sudden emergency, where there is no official receiver capable of acting, any act or thing required or authorised to be done by an official receiver may be done by the registrar.

Removal of special manager. S. 12. Rs. 302, 342—3.

331. When the official receiver appoints a special manager he may at any time remove him if his employment seems unnecessary or unprofitable to the estate, and he shall remove him, if so required by a special resolution of the creditors.

Mode of application to Court.

332. Applications by the official receiver to the Court may be made personally, and without notice or other formality; but the Court may in any case order that an application be renewed in a formal manner, and that such notice thereof be given to any person likely to be affected thereby as the Court may direct.

Evidence on application by official receiver.

333. Where for the purpose of any application to the Court by the official receiver for directions, or to adjudge a debtor bankrupt, or for leave to disclaim a lease, or for an extension of time to apply for leave to disclaim a lease, or for an order to take criminal proceedings against a bankrupt, or to commit a bankrupt, it is necessary that evidence be given by him in support of such application, such evidence may be given by a report of the official receiver to the Court, and need not be given by affidavit, and any such report of the official receiver to the Court shall be received by the Court as *primâ facie* evidence of the matters reported upon.

Application for directions. S. 89 (3). R. 313.

334. In any case of doubt or difficulty, or in any matter not provided for by the Act or these Rules relating to any proceeding in Court, the official receiver may apply to the Court for directions.

Duties where no assets. R. 147.

335. Where a debtor against whom a receiving order has been made has no available assets, the official receiver shall not be required to incur any expense in relation to his estate without the express directions of the Board of Trade.

Accounting by official receiver.

336.—(1) Where a composition or scheme is sanctioned by the Court the official receiver shall account to the debtor, or, as the case may be, to the trustee under the composition or scheme.

(2) Where a debtor is adjudged bankrupt, and a trustee is appointed, the official receiver shall account to the trustee in the bankruptcy.

(3) If the debtor, or, as the case may be, the trustee, is dissatisfied with the account or any part thereof, he may report the matter to the Board of Trade, who shall take such action (if any) thereon as it may deem expedient. S. 18. Rs. 208, 318. Ss. 54, 70 (3).

(4) The provisions of Part IV. of these Rules as to trustees and their accounts shall not apply to the official receiver when acting as trustee, but he shall account in such manner as the Board of Trade may from time to time direct. Part IV. is Rs. 280—346.

337. Where there is no committee of inspection any functions of the committee of inspection which devolve on the Board of Trade may, subject to the directions of the Board, be exercised by the official receiver. To act for Board of Trade where no committee of inspection.

338. The debtor shall, on the request of the official receiver, furnish him with trading and profit and loss accounts, and a cash and goods account for such period not exceeding two years prior to the date of the receiving order as the official receiver shall specify. Provided that the debtor shall, if ordered by the Court so to do, furnish such accounts as the Court may order for any longer period. If the debtor fails to comply with the requirements of this Rule the official receiver shall report such failure to the Court, and the Court shall take such action on such report as the Court shall think just. Ss. 22, 121. Trading account of debtor.

339. The following provisions shall apply to every case in which proceedings are taken either by action, motion, or in any other manner, against any official receiver in respect of anything done or default made by him, when acting, or in the *bonâ fide* and reasonable belief that he is acting, in pursuance of the Act, or in execution of the powers given to official receivers by the Act:— Liability for costs, expenses, and damages. Rs. 231, 318.

(1) Subject to the provisions of the next following sub-section, the costs, damages and expenses which the official receiver may have to pay, or to which he may be put under such proceedings, shall be paid out of the estate of the debtor.

(2) As soon as any such proceedings are commenced it shall be the duty of the official receiver to report the same to the Board of Trade, who shall determine whether or not such proceedings shall be resisted or defended.

(3) The official receiver shall not, unless the Court shall otherwise order, be entitled to be paid out of the estate any costs or expenses which he may have to pay or bear in consequence of resisting or defending any such proceedings, unless the Board of Trade have determined that such proceedings shall be resisted or defended.

(4) The official receiver shall, if necessary, apply to the Court for any reasonable adjournment of any motion, or other summary proceedings before a Court having jurisdiction in bankruptcy, pending the determination of the Board of Trade upon the question whether such motion or proceedings should be resisted or defended. And the Court may grant an adjournment upon such terms as it shall think fit.

(5) If such proceedings are commenced before the appointment of a trustee by the creditors, or before the approval of a composition or scheme, the official receiver may, before putting the trustee appointed by the creditors, or in the case of a composition, the debtor himself into possession of the debtor's property, retain the whole or some part of the debtor's estate according as the Board of Trade shall in each case direct, to meet the damages, costs, or expenses which the official receiver may have to pay or bear in consequence of the said proceed- R. 318 (2).

RULES 339—345.

ings. If such proceedings are commenced after the appointment of a trustee by the creditors, or after the approval of a composition or scheme, the official receiver shall forthwith give notice of such proceedings to the trustee, or other person in whom the estate of the debtor may be vested (including where necessary the debtor himself), and the estate of the debtor shall, as from the date of such notice, be deemed to be charged with the payment of the said damages, costs, and expenses.

Ss. 74, 75.

Payments into and out of a Bank.

Local bank. S. 74 (4). R. 312.

340. Where the trustee is authorised to have an account at a local bank, he shall forthwith pay all moneys received by him in to the credit of the estate. All payments out shall be made by cheque payable to order, and every cheque shall have marked or written on the face of it the name of the estate, and shall be signed by the trustee, and shall be countersigned by at least one member of the committee of inspection, and by such other person, if any, as the creditors or the committee of inspection may appoint.

Payments out of Bank of England. Ss. 74 (7), 162. R. 346.

341. All payments out of the Bankruptcy Estates Account shall be made in such manner as the Board of Trade may from time to time direct.

Security by Trustee or Special Manager.

Standing security to Board of Trade. Ss. 12 (2), 21 (2). Rs. 38—46, 302.

342. In the case of a trustee or special manager the following rules as to security shall be observed, namely:—

(1) The security shall be given to such officers or persons and in such manner as the Board of Trade may from time to time direct.

(2) It shall not be necessary that security shall be given in each separate matter; but security may be given either specially in a particular matter or generally to be available for any matter in which the person giving security may be appointed either as trustee or special manager.

(3) The Board of Trade shall fix the amount and nature of such security, and may from time to time, as they think fit, either increase or diminish the amount of special or general security which any person has given.

S. 12.

Special Manager.

Remuneration of special manager. R. 125.

343. Where a special manager is appointed, and his remuneration is not fixed by the creditors, he shall be paid such remuneration as may from time to time be fixed by the Board of Trade.

Accounts.

344. Every special manager shall account to the official receiver, and such special manager's accounts shall be verified by affidavit in the prescribed form, and, when approved by the official receiver, the totals of the receipts and payments shall be added to the official receiver's accounts.

Unclaimed Funds, &c., under Section 162.

Mode of payment into Bank of England.

345. Any person whose duty it is, pursuant to section 162 of the Act, to pay into the Bankruptcy Estates Account any unclaimed funds or dividends, shall first apply in such manner as the Board of Trade may direct to the Board of Trade for a paying-in order. The paying-in order shall be an authority to the Bank of England to receive the payment.

346. An application, under section 162 of the Act for payment out of the Bankruptcy Estates Account of any sum to which any person claims to be entitled, shall be made in such form and manner as the Board of Trade may from time to time direct, and shall (unless the Board of Trade dispenses therewith) be supported by the affidavit of the claimant, and such further evidence as the Board may require.

Application for payment out by party entitled.

Unclaimed Funds, &c., under Section 162 *of Act of* 1883.

346A. For the purposes of sub-section 1 of section 162 of the Act of 1883, the Board of Trade may at any time order the trustee under any bankruptcy, composition or scheme to submit to them an account verified by affidavit of the sums received and paid by him under or in pursuance of any such bankruptcy, composition or scheme, and may direct and enforce an audit of the account, and payment of any unclaimed or undistributed moneys arising from the property of the debtor in the hands or under the control of such trustee into the Bankruptcy Estates Account in accordance with the terms of the said sub-section.

Accounts by trustees under Act of 1883 of unclaimed funds.

PART V.

MISCELLANEOUS.

Miscellaneous Matters.

347. The Board of Trade may from time to time issue general orders or regulations, for the purpose of regulating any matters under the Act or these Rules, which are of an administrative and not of a judicial character. Judicial notice shall be taken of any general orders or regulations which are printed by the Queen's printers, and purport to be issued under the authority of the Board of Trade.

Board of Trade orders, &c.
S. 140 (2).
Rs. 321—2, 329.

348.—(1) Any person who knowingly falsifies or fraudulently alters any document in or incidental to any proceeding under the Act or these Rules, shall be deemed to be guilty of contempt of Court, and shall be liable to be punished accordingly.

(2) The penalty imposed by this Rule shall be in addition to, and not in substitution for, any other penalty, punishment, or proceeding to which such person may be liable.

Falsification of documents.

349. No person shall, as against the official receiver or trustee, be entitled to withhold possession of the books of accounts belonging to the debtor or to set up any lien thereon.

Note.—This Rule is strictly limited to *books of account: In re Winslow, ex parte Godfrey*, 16 Q. B. D. 696.

No lien on debtor's books.
S. 50.
Rs. 69, 294.

350. Non-compliance with any of these Rules, or with any rule of practice for the time being in force, shall not render any proceeding void, unless the Court shall so direct, but such proceeding may be set aside, either wholly or in part, as irregular, or amended or otherwise dealt with in such manner and upon such terms as the Court may think fit.

Non-compliance with Rules.
Ss. 105, 143.
Rs. 54, 207.

351. The Court may, under special circumstances and for good cause shown, extend or abridge the time appointed by these Rules or fixed by any order of the Court for doing any act or taking any proceeding.

Abridgment or enlargement of time.
S. 105 (4).
R. 130.

352. The Bankruptcy Rules of 1870, 1871, 1873, and 1878 are hereby annulled, except so far as regards any proceedings under the Bankruptcy Act, 1869, which may be pending in any Court at the date of the coming into operation of these Rules.

Repeal of Rules under Act of 1869.
S. 169.
R. 354.

RULES 288—296.

288. The committee of inspection shall, not less than once every three months, audit the cash book and certify therein under their hands the day on which the said book was audited. The certificate shall be in the Form No. 128 in the Appendix, with such variations as circumstances may require.

Audit of cash book.
R. 336 (4).

289.—(1) Every trustee shall, at the expiration of six months from the date of the receiving order, and at the expiration of every succeeding six months thereafter until his release, transmit to the Board of Trade a duplicate copy of the cash book for such period, together with the necessary vouchers and copies of the certificates of audit by the committee of inspection. He shall also forward with the first accounts a summary of the debtor's statement of affairs, in such form as the Board of Trade may direct, showing thereon in red ink the amounts realised, and explaining the cause of the non-realisation of such assets as may be unrealised.

Board of Trade audit of trustee's account.
R. 336 (4).
Ss. 78, 91, 102 (5).

(2) When the estate has been fully realised and distributed, or, if the adjudication is annulled, the trustee shall forthwith send in his accounts to the Board of Trade, although the six months may not have expired.

(3) The accounts sent in by the trustee shall be certified and verified by him according to the Form No. 129 in the Appendix.

290. When the trustee's account has been audited, the Board of Trade shall certify that the account has been duly passed, and thereupon the duplicate copy, bearing a like certificate, shall be transmitted to the registrar, who shall file the same with the proceedings in the bankruptcy.

Copy of accounts to be filed.
S. 78.
R. 273 (18).

291. Where a trustee has not since the date of his appointment or since the last audit of his accounts, as the case may be, received or paid any sum of money on account of the debtor's estate, he shall, at the period when he is required to transmit his estate account to the Board of Trade, forward to the Board an affidavit of no receipts or payments.

Affidavit of no receipts.

292. Upon a trustee resigning, or being released or removed from his office, he shall deliver over to the official receiver, or, as the case may be, to the new trustee, all books kept by him, and all other books, documents, papers, and accounts in his possession relating to the office of trustee.

Proceedings on resignation, &c., of trustee.
Ss. 82, 86.
Rs. 302—4, 309—11.

293. Where a receiving order has been made against debtors in partnership, distinct accounts shall be kept of the joint estate and of the separate estate or estates, and no transfer of a surplus from a separate estate to the joint estate on the ground that there are no creditors under such separate estate shall be made until notice of the intention to make such transfer has been gazetted.

Joint and separate estates accounts.
S. 40 (3).
R. 128.

294. The Board of Trade may, on the application of the official receiver, direct that the debtor's books of account and other documents given up by him may be sold, destroyed, or otherwise disposed of.

Disposal of bankrupt's books and papers.
Rs. 292, 349.

295. Where property forming part of a debtor's estate is sold by the trustee through an auctioneer or other agent, the gross proceeds of the sale shall be paid over by such auctioneer or agent, and the charges and expenses connected with the sale shall afterwards be paid to such auctioneer or agent on the production of the necessary allocatur of the taxing officer. Every trustee, by whom such auctioneer or agent is employed, shall be accountable for the proceeds of every such sale.

Expenses of sales.
S. 56 (1).

296. In any case in which, under the provisions of section 64 of the Act, a trustee makes an allowance to a bankrupt out of his property, such allowance, unless the creditors by special resolution determine otherwise, shall be in money, and the amount allowed shall be duly entered in the trustee's accounts.

Allowance to debtor.
R. 64 (2).
S. 325.

Trustees.

297. A certificate by the Board of Trade, certifying the appointment of a trustee, shall be in the Form No. 115 in the Appendix, with such variations as circumstances may require. Form of certificate of appointment. Ss. 21, 54, 138.

298. When the appointment of a trustee is certified, notice of his appointment shall forthwith be gazetted by the Board of Trade; and a certificate of the appointment shall be sent by the Board of Trade to the registrar. The trustee shall also forthwith insert notice of his appointment in a local paper. The expense of such gazetting and notice shall be borne by the trustee, and may be charged by him to the estate. Notice of appointment.

299.—(1) Where the Board of Trade objects to the appointment of a trustee, and is required by a majority in value of the creditors to notify the objection to the High Court, the requisition shall be in the Form No. 114 in the Appendix, with such variations as circumstances may require. On receipt of such requisition the Board of Trade shall forthwith transmit a copy thereof to the senior bankruptcy registrar of the High Court, who shall fix a time for the hearing of the matter. At the hearing the person objected to, and every creditor and the Board of Trade, shall be entitled to be heard. Notification of objection to High Court. S. 21 (3).

(2) The Board of Trade may also with the copy of the requisition communicate to the Court the grounds of its objections. Any report so made by the Board of Trade shall be *primâ facie* evidence of the statements therein contained. S. 140.

300. It shall be a sufficient objection to the appointment of a trustee that he has not complied with the requirements of section 162 of the Act, or of any order of the Board of Trade made thereunder in respect of any matter as to which he was under an obligation to comply. Trustee not accounting under s. 162. S. 21.

301. It shall be a sufficient reason for refusing to certify the appointment of a person as trustee that in any other proceeding under the Act such person has either been removed under section 86 (2) of the Act from the office or trustee, or has failed or neglected, without good cause shown by him, to render his accounts for audit for two months after the date by which the same should have been rendered. Removal of trustee. Rs. 302—3, 311.

302. Where a trustee or special manager has given security in the prescribed manner, but fails to keep up such security, the Board of Trade may, if they think fit, remove him from his office. Removal for failing to keep up security. Rs. 301, 303, 311, 331.

303. Where a trustee is removed by the Board of Trade, notice of the order removing him shall at once be transmitted by the Board of Trade to the Registrar of the Court, who shall file the notice with the proceedings in the matter and give written notice thereof to the official receiver. The Board of Trade shall also cause a notice of the order to be gazetted. Removal by Board of Trade. S. 86, R. 292.

304. A trustee intending to resign his office shall call a meeting of creditors to consider whether his resignation shall be accepted or not, and shall give not less than seven days' notice of the meeting to the official receiver. Notice of resignation. S. 84. R. 292.

305. The creditors, or, as the case may be, the committee of inspection, in voting the remuneration of the trustee, shall distinguish between the commission or per-centage payable on the amount realised, and the commission or per-centage payable on the amount distributed in dividend. Rate of remuneration. S. 72. Rs. 306—7.

306. Except as provided by the Act or Rules, no trustee shall be entitled to receive out of the estate any remuneration for services rendered to the estate, except the remuneration to which under the Act and Rules he is entitled as trustee. Limit of remuneration.

RULES OF THE SUPREME COURT

UNDER SECTION 12 OF

THE BANKRUPTCY ACT, 1890.

SALES UNDER EXECUTIONS.

ORDER XLIII.

RULES 8—15.

B. A., 1883, s. 145.

B. A., 1890, s. 12.

Ante, p. 36.

8. Every application under section 145 of the Bankruptcy Act, 1883, and section 12 of the Bankruptcy Act, 1890, for an order that a sale under an execution may be made otherwise than by public auction shall be made by summons at chambers. Upon service of a copy of the summons on the sheriff he shall forward to the applicant a list of the names and addresses of every person at whose instance any other writ of execution against the goods of the debtor has been lodged with him (hereinafter called the sheriff's list).

9. The summons shall contain a short statement of the grounds of the application.

10. Notice of the application shall be given by serving a copy of the summons four clear days before the day on which the summons is returnable:—

(*a*) If the applicant is an execution creditor, upon the sheriff, and upon every person named in the sheriff's list:

(*b*) If the applicant is the execution debtor, upon the execution creditor at whose instance the execution has been levied under which the sale is intended to be made, the sheriff, and every other person named in the sheriff's list.

11. On the hearing of the application the applicant shall produce to the Court or Judge the sheriff's list.

12. The sheriff and every other person on whom the summons has been served may attend the hearing of the application, and be heard in opposition to or in support of the application.

13. The Court or a Judge may, at the hearing of any summons under these Rules, direct that all or any part of the costs, may be borne by any of the persons attending, or otherwise as may be just.

14. In these Rules—"sheriff" includes any officer charged with the execution of any writ of execution.

15. These Rules shall commence and come into operation on the 1st January, 1891. They may be cited as the Rules of the Supreme Court (Sales under Executions) or as O. XLIII., Rules 8 to 14, with reference to the Rules of the Supreme Court, 1883.

December 17th, 1890.

COUNTY COURT RULES, 1889, 1892, 1895, 1899 & 1900.

AS TO THE COMMITTAL OF JUDGMENT DEBTORS.

(ORDER XXV., rs. 13—42B.)

(See Rule 361, *ante*, and Debtors Act, 1869, s. 5, *ante*, p. 177.)

Judgment-Summons.

RULES 13—14B.

13. No order of commitment under the Debtors Act, 1869, shall be made unless a summons to appear and be examined on oath, hereinafter called a judgment-summons, shall have been personally served upon the judgment-debtor, which summons may be issued without leave by the Court within the district of which the debtor dwells or carries on business or is employed.

Judgment-summons to be served personally. Forms 50, 53.

14A. Where a debtor does not dwell or carry on business and is not employed within the district of the Court in which the judgment was obtained, the summons shall not be issued from that Court without the leave of the Judge. The application for leave shall be made upon affidavit according to the form in the Appendix, and leave shall not be granted unless the Judge is satisfied that the evidence afforded by such affidavit if uncontradicted would justify the making of an order of commitment against the debtor. If the leave be granted a copy of the affidavit shall be lodged with the registrar and annexed to the judgment-summons and served therewith. The districts of the Courts referred to in section 84 of the Act shall be deemed to be one district, so far as relates to the issuing of judgment summonses.

Application for leave for a judgment-summons to issue out of the district. Form 52A. 51 & 52 Vict. c. 43, s. 84.

14B. Where a judgment or order is against a firm, or against a person, who is carrying on business in any name other than his own, in such other name, and the person entitled to enforce the judgment or order desires to do so by judgment-summons against any person whom he alleges to be a partner in or the sole member of such firm, or against the person whom he alleges to be carrying on business in such other name as aforesaid, he shall file an affidavit together with a copy thereof in one of the forms in the Appendix, and thereupon a judgment-summons shall issue in the form in the Appendix directed to such person alleged to be such partner or sole member, or to be carrying on business in such other name as aforesaid, and there shall be annexed to such judgment-summons and served therewith, a copy of the said affidavit sealed with the seal of the Court. And if such person alleged to be such partner or sole member or to be carrying on business in such other name as aforesaid shall not appear on the return day of such judgment-summons, he shall be deemed to admit that he is a partner in or the sole member of such firm, or that he does carry on business in such other name as aforesaid and to admit his liability to pay the amount due and payable under such judgment or order. But if such person shall appear and deny that he is a partner in or the sole member of such firm, or that he carries on business in such other name as aforesaid, the judge may decide the

Judgment-summons when judgment against a firm, &c.

Forms 52C, D. Form 52E.

RULES 14B—19.

fact on the evidence then before him or may direct an issue to be tried to determine the same.

No judgment-summons to be issued after a certain time from judgment, &c., except an affidavit in proof of means is filed.

15. A judgment-summons not being a successive summons shall not issue after the expiration of four months from the date on which the last payment into court, if any, under such judgment or order, shall have been made, or if no payment into Court shall have been made, then from the date upon which default was made, unless the delay has been occasioned by an attempt to levy an execution upon the debtor's goods, or unless an affidavit is filed, stating the debtor's place of residence or business, his trade or profession (if any), and any facts known to the deponent, showing the means which the debtor has or since the date of the judgment or order has had to pay or to have paid the debt or instalments sufficient to satisfy the Judge that the debtor has the means of obeying or could have obeyed the judgment or order of the Court; and if the facts stated in the affidavit do not satisfy the registrar that the debtor might be thereon committed, the registrar shall refuse to issue the summons, and refer the applicant to the Judge for his directions, and the Judge shall make such order in the matter as he shall think right.

Where judgment-summons applied for at a Court in which judgment was not obtained. Form 49.

Amendment of Order XXV. Rule 16.

16. Where a judgment-creditor desires to apply for a judgment-summons to a Court other than the Court in which the judgment or order was obtained, he shall obtain from the registrar of the Court in which the judgment or order was obtained, a certified copy of the judgment or order in the action, according to the form in the Appendix, and file the same with his application. Such copy shall state the date on which the last payment into Court, if any, under such judgment or order was made, or if no payment into Court has been made, the date upon which default was made; and the issue of a judgment-summons under this Rule shall be subject to the provisions of Rule 14B or Rule 15 of this Order, as the case may be.

Where judgment-summons required on a judgment of a Court other than a County Court. Form 51.

Amendment of Order XXV. Rule 17.

17. Where a party desires to enforce by commitment in any Court a judgment or order of any competent Court other than a County Court, he shall obtain from such other Court an office copy of the judgment or order he desires so to enforce, and shall file such office copy, together with an affidavit of the sum then due thereon, with the registrar of the Court of the district in which the party, against whom the same is to be enforced, resides or carries on business or is employed, and the registrar shall thereupon issue a judgment-summons. The issue of a judgment-summons under this Rule shall be subject to the provisions of Rule 14B of this Order in cases to which that Rule applies: but Rule 15 of this Order shall not apply to the issue of a judgment-summons under this Rule.

See note to sect. 103, *ante*.

Issue and service of judgment-summons. Forms 50, 53.

18. Every judgment-summons shall be according to the form in the Appendix, and be issued not less than ten clear days, and be served not less than five clear days, before the day on which the judgment-debtor is required to appear, except in the case provided for by the next following Rule.

18A. Form 50 is hereby annulled, and every judgment-summons shall be in accordance with Form 50B in the Appendix.

Where judgment-debtor about to remove.

19. Where the person applying for the judgment-summons shall state to the registrar that the judgment-debtor is about to remove from his dwelling or place of business, or is keeping out of the way to avoid service, then the judgment-summons may be issued and served at any time before the hearing: provided that the Court shall not act upon a summons issued under this Rule, unless at the hearing the Judge is satisfied, by evidence on oath, that at the time of the application for the judgment-summons such party was either about to

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remove from his dwelling or place of business, or was keeping out of the way to avoid service.

Successive judgment-summons.

20A. Where a judgment-summons has not been served in due time by a bailiff, a successive summons may be issued without fee at any time within three months; but if such successive summons is not served in due time, no further successive summons shall be allowed, but a fresh summons may be issued on payment of the fee. Any successive or subsequent judgment-summons may be served by such person as the Judge or registrar may direct. If not served by bailiff, an affidavit of service in the form in the Appendix by the person who actually effected service must be lodged with the registrar before the return day.

Form 52B.

Adjournment.

21A. The hearing of a judgment-summons may, by leave of the Judge, be adjourned from time to time. The provisions of Order 13, Rule 16, as to the hearing fee in case of adjournment, shall apply to the adjournment of the hearing of a judgment-summons.

Witnesses may be summoned to prove means.

22. Witnesses may be summoned to prove the means of the judgment-debtor, in the same manner as witnesses are summoned to give evidence upon the hearing of a plaint; and the expenses of any person examined by the Judge, whether summoned or not, may be allowed by the Judge.

Name of witnesses to be entered in Book H.

23. In Book H., referred to in the Appendix, there shall be entered the name of every witness who shall have been examined as to the means of the debtor, and whenever an order of commitment shall be made there shall also be entered in the column "order" of the said book a note or minute showing whether such order has been made on account of the past or of the present ability of the debtor to obey the order of the Court.

Evidence by affidavit, where creditor or debtor not resident in district of issuing Court.

24. Where a judgment-creditor issuing a judgment-summons, or a judgment-debtor summoned to appear by a judgment-summons, does not reside within the district of the Court in which the summons is to be heard, he may forward to the registrar of the Court from which the summons issued an affidavit, setting forth any facts which he may wish to be before the Court prior to any order being made on the summons. And the Judge may, if he shall think fit, on the hearing of the judgment-summons, admit the affidavit as the evidence of the person by whom the same is made.

On issue of judgment-summons where warrant of execution has been issued it shall be lodged in Court.

25. Upon the issue of a judgment-summons against a party upon a judgment or order of the Court out of which the judgment-summons issued, the bailiff of such Court shall lodge in Court any warrant of execution against the goods of such party which may have been issued in the action.

26. Where a judgment-summons is heard in a Court other than that in which the judgment or order was obtained, and an order of commitment or an order altering the terms of the judgment or order is made, all payments under the new order shall be made into, and execution or other process shall be issued by, the Court making such new order.

Where order of commitment is made or any order is altered by Court, proceedings to be continued in that Court.

Form 54.

27. Where a certified copy of a judgment or order not marked to be used as evidence only is obtained from a registrar, he shall make on the minute of the judgment or order a memorandum of having given such certified copy, and no warrant of execution against the goods or judgment-summons upon such judgment or order shall issue from the same Court, unless it be shown to the satisfaction of the Judge or registrar that no order has been made against the execution debtor in any other Court upon such certified copy.

Minute that a certificate has been given to be made.

Where order sent to a

28. Where an order of commitment is sent to a foreign Court under the provisions of section 158 of the Act, the registrar of the foreign Court shall indorse on it a notice, according to the Form in the Appendix, addressed to the Governor of the prison used by that Court, and shall affix the seal of the Court thereto.

RULES 29—34.

foreign Court. Form 56.

29. Where a judgment-debtor shall upon the return-day of a judgment-summons satisfy the judge that a receiving order has been made for the protection of his estate or that he has been adjudicated bankrupt, and that the debt was provable in the bankruptcy, or that, in respect of the debt, resolutions have been duly registered under sections one hundred and twenty-five and one hundred and twenty-six of the Bankruptcy Act, 1869, or that an order has been made for the administration of his estate under section one hundred and twenty-two of the Bankruptcy Act, 1883, no order of commitment shall be made, except in accordance with the provisions of the last-mentioned section.

Bankrupt not to be committed.

No commitment when adjudication takes place after order of commitment. Form 58.

30. Where a judgment-debtor shall, after the making of an order of commitment against him, file, in the Court in which the order was made, an affidavit according to the form in the Appendix, stating that a receiving order has been made for the protection of his estate, or that he has been adjudicated a bankrupt, and that the debt was provable in the bankruptcy, or that in respect of the judgment-debt resolutions have been duly registered under sections one hundred and twenty-five and one hundred and twenty-six of the Bankruptcy Act, 1869, or that an order for the administration of his estate has been made under section one hundred and twenty-two of the Bankruptcy Act, 1883, annexing to such affidavit in such last-mentioned case a certificate of the registrar of the Court in which such last-mentioned order shall have been so made, and shall forthwith, upon such affidavit being so filed, give notice to the judgment-creditor of the filing thereof, such order of commitment shall not issue, but if issued and not executed it shall be recalled.

Discharge of bankrupt judgment-debtor. Form 60.

31. Where a judgment-debtor is arrested, he may file in the Court within the district of which he is in custody, an affidavit as mentioned in the last preceding Rule, and thereupon the judgment-debtor shall be discharged out of custody upon the certificate of the registrar of that Court, who shall forthwith give notice to the judgment-creditor of such discharge.

This and the two preceding rules show that the commitment order is not a process for contempt, but to enforce the payment of money; after a receiving order has been made, that process is suspended by s. 9 of B. A., 1883, *ante*: see *In re Ryley, Ex parte Official Receiver*, 15 Q. B. D. 329, decided under County Court Rules, 1884, Rules 1—4.

Certificate that an order of administration has been made. Form 59.

32A. For the purposes of the three last preceding Rules the registrar of the Court in which an order for the administration of a debtor's estate has been made under the provisions of section 122 of the Bankruptcy Act, 1883, shall, upon the application of the debtor, issue to him a certificate according to the form in the Appendix.

Order of commitment. Forms 55, 56.

33. An order of commitment made under the Debtors Act, 1869, shall be according to the form in the Appendix, and shall, on whatever day it may be issued from the registrar's office, bear date on the day on which the order for commitment was made, but such order shall not be enforced after the expiration of one year from the date thereof unless at any time before or after the expiration of such year the Judge shall otherwise order. The fact of the making of such latter order shall be indorsed on the order of commitment, according to the form in the Appendix.

Payment on arrest.

34. When an order of commitment for non-payment of money is issued, the defendant may, at any time before his body is delivered into the custody of the gaoler, pay to the bailiff the amount indorsed on the order as that on the payment of which he may be discharged; and on receiving such amount the bailiff shall discharge the defendant,

and shall within twenty-four hours after receiving such amount pay over the same to the registrar of the Court of which he is an officer.

35. The sum indorsed on the order of commitment, as that upon payment of which the prisoner may be discharged, may be paid into the Court from which the commitment order was issued, or to the gaoler in whose custody the prisoner is, or into the foreign Court to which it was sent for re-issue under section 158 of the Act. Where the payment is made to the registrar, he shall sign and seal a certificate thereof, and upon receiving such certificate by post or otherwise, the gaoler in whose custody the prisoner shall then be, shall forthwith discharge such prisoner. And where the payment is made to the gaoler, he shall, upon payment to him of such amount, together with costs sufficient to pay for transmitting such amount forthwith by post-office order to the Court under the order of which the prisoner was committed, sign a certificate of such payment, and discharge the prisoner, and such costs of transmission shall be part of the prescribed costs.

Payment in prison.

9 & 10 Vict. c. 95.

Form 61.

36. Upon the judgment-creditor lodging with the registrar a request in writing, according to the form in the Appendix, that the judgment-debtor, if in prison, may be discharged from custody, the registrar shall issue a notice according to the form in the Appendix, and transmit the same by post to the gaoler in whose custody the judgment-debtor is; and the gaoler shall upon receipt of such notice forthwith discharge the prisoner.

Discharge of prisoner on request of judgment-creditors.

Form 62.

Form 63.

37. A certificate of payment by a prisoner shall be according to the form in the Appendix.

Certificate of payment.

Form 61.

38. If a judgment-debtor appears at the return-day, but the judgment-creditor fails to appear, the Judge may award costs to the judgment-debtor.

Costs on default of appearance of a judgment-creditor.

38AA. No costs shall be allowed to a solicitor for attending at the hearing of a judgment summons, unless the party for whom he appears resides out of the district of the Court at which the summons is heard, or unless such summons is on a judgment or order of a Court other than a County Court, in either of which cases the Judge may, if he thinks fit, allow the costs specified in item 64 in the scale for attending in Court to make or oppose an interlocutory application.

What costs allowable to solicitor on judgment-summons.

38AA.—(1) A fee not exceeding five shillings may, if the Judge thinks fit, be allowed under Order XXV., Rule 38AA (Rule 13 of the County Court Rules, 1895), where the amount for which the judgment summons issues does not exceed ten pounds.

Costs to solicitor on judgment-summons under 10*l.*

38BB. Where on the hearing of a judgment summons on a judgment or order of a County Court, the Judge in lieu of making an order of commitment shall make a fresh order for payment by instalments, no costs for fees or witnesses shall be allowed to a judgment creditor, unless the Judge shall be satisfied that the debtor has made default and has had since the date of the original judgment the means to pay the sum in respect of which he has made default, and a minute thereof is entered in Book H.

Where no costs are to be allowed on a judgment-summons.

38C. Where on the hearing of a judgment-summons the Judge in lieu of making an order of commitment makes a fresh order for payment by instalments, or where an order for payment by instalments is made under Order XXIII., Rule 14, there shall be included in the amount payable under such order, for the purpose of any proceedings under such order otherwise than by way of judgment-summons, the amount (if any) in respect of which an order of commitment has been made, and in respect of which the defendant has been imprisoned, but so that the defendant shall not be liable to be imprisoned a second time for non-payment of such last-mentioned amount. On any subsequent judgment-summons on default in payment of any instalment or instalments payable under such fresh order, the amount (if any) in respect of which the defendant has been imprisoned before the

Provisions as to amount for which defendant has been imprisoned, where fresh order made on judgment-summons or under Order XXIII., Rule 14,

RULES 38C—42B.

and as to subsequent judgment-summons under such order. Form 50A.

date of the order shall be deducted on the face of the summons from the amount payable under the order; but in calculating for the purposes of any such subsequent summons the amount in payment of which the defendant has made default, the instalments payable under the order shall be considered as attributable in the first instance to the discharge of the amount payable under the order other than the amount in respect of which the defendant has been so imprisoned, and the summons may be issued for the full amount of the instalments in arrear, if such amount does not exceed the balance which remains payable under the order after deducting the amount in respect of which the defendant has been so imprisoned, or if the instalments in arrear exceed such balance, then for the amount of such balance.

Costs of abortive execution not to be included in judgment-summons, or fresh order under Order XXIII., Rule 14.

39A. Costs incurred in endeavouring to enforce a judgment or order by way of execution against the goods, and not recovered under such execution, shall not be included in the amount due under such judgment or order for the purposes of a judgment-summons, or of an application for a fresh order for payment under Order XXIII., Rule 14, nor shall money paid into Court otherwise than under execution against the goods be attributed to payment of such costs.

40A. Orders in the nature of an injunction, and all orders, interlocutory or otherwise, within the competence of the Court, which if the same were made in an action or matter pending in the High Court, could, in such Court, be enforced by attachment of the person or committal, may be enforced by order of the Judge by warrant of attachment, which shall be according to the form in the Appendix.

Orders enforceable by attachment. 36 & 37 Vict. c. 66, s. 89. Form 296.

40B. Before any application shall be made for the issue of a warrant of attachment, a sealed copy of the order sought to be so enforced, endorsed with a notice in the form in the Appendix, shall be served upon the person to be bound thereby. The copy so endorsed shall be issued by the registrar for service on the application of the party entitled to the benefit of the order. By leave of the registrar it may be issued to and served by the applicant's solicitor, but in default of such leave it shall be issued to and served by bailiff. Service shall in all cases be personal unless the Judge for good cause shall make an order for substituted service pursuant to Order LI., Rule 6.

Endorsement and service of order. Form 292A.

Failure to obey order after service of copy thereof. Form 293.

41A. If the person bound by the order fails to obey it, the registrar, on the application of the party entitled to the benefit of it, shall, not less than three days after service of the copy endorsed as provided by Rule 40B, issue for service a notice under the seal of the Court requiring the person who has failed to obey the order to appear at a Court to be held on a day to be named in such notice to show cause why he should not be committed for his contempt in neglecting to obey such order. The notice shall be issued for service and served in the same manner and under the same conditions as the endorsed copy mentioned in Rule 40B. By leave of the Judge the notice may be issued and served at an earlier period than as above prescribed.

Order of Judge for attachment. Forms 294A, 296.

42A. On the day named in the notice mentioned in the last preceding Rule, the Judge, on proof of service of the copy order duly endorsed as provided by Rule 40B, and of the above notice, as provided by Rule 41A of this order, and of the disobedience of the person in default, may order a warrant of attachment to issue, either unconditionally or on such terms as shall be just, and may make such order as to costs as he may think fit. Provided that if the party in default appear either in person, or by his solicitor or agent, proof of service of the copy order and notice shall not be necessary, unless the Judge shall otherwise order.

Order to be drawn up and copy served.

42B. The order of the Judge authorising the issue of the warrant shall be drawn up and a sealed copy thereof shall be served on the person in default either before or at the time of the execution of the warrant, unless the Judge shall otherwise order.

RULES AS TO ADMINISTRATION ORDERS.

UNDER SECTION 122 OF

THE BANKRUPTCY ACT, 1883,

Made 21st December, 1888.

RULES 1—5.

1. The Rules made on 1st December, 1883, under the provisions of section 122 of the Bankruptcy Act, 1883 (hereinafter called the Act), are hereby annulled as from the 1st day of February, 1889, and the following Rules shall thereafter stand in lieu thereof.

Former rules annulled.

2. A debtor against whom a judgment has been obtained in a County Court desiring to obtain an administration order under section 122 of the Act shall file with the registrar of the Court a request and statement in writing in the Form No. 1 in the Appendix.

Request for order.

When the debtor is illiterate and unable to fill up the request and statement the registrar or his clerk shall fill them up from the information given by the debtor.

3.—(1) The debtor shall state in his request whether he proposes to pay his creditors in full, or whether he proposes to pay a composition. In the latter case he shall further state the amount in the pound which he proposes to pay, and in either case the amount of the monthly or other instalments by which he proposes to pay.

Contents of request.

(2) The debtor shall set out in a list attached to his request the names, addresses, and descriptions of all his creditors, including all secured creditors, and all creditors having power to distrain, such as creditors for rent, rates, and taxes.

(3) The debtor shall attach to his request and statement an affidavit deposing that, to the best of his knowledge, information, and belief, the names of all his creditors, and the true amounts of the debts due from him to them, are set out in the list attached to the request, and that the statements made by him in his request and statement are true.

4. Upon a request being filed the registrar shall as soon as may be send in the Form No. 3 in the Appendix a notice to all the creditors mentioned in the list of the day and hour when the debtor's request will be heard. The notice shall be sent by post not less than ten clear days before the day appointed for hearing the request.

Notice of request.

The registrar shall also in like manner send a notice to the debtor in the Form No. 2 in the Appendix.

5. Any creditor to whom the notice of the request has been sent and who desires to object to any debt stated by the debtor, shall send written notice of his objection, by post or otherwise, to the registrar, and to the debtor and to the creditor whose debt is objected to, not less than five clear days before the day fixed for the hearing of the request; and he shall state in the notice the grounds of his objection. The objection may be heard although such notice has not been given.

Objection to debts set out by debtor.

RULES 6—8.

Proceedings on hearing of request.

6. Upon the request coming on for hearing the course of proceedings shall be as follows:—

(1) The debtor shall attend in person unless the Court otherwise directs.

(2) Any creditor, whether he has received a notice of the request or not, may attend the hearing thereof and prove his debt, and object to any debt.

(3) All debts set out in the list attached to the request shall be taken to be proved unless objected to by a creditor, or disallowed by the Court.

(4) All creditors whose debts are objected to either by the debtor or any other creditor shall prove their debts in like manner as upon the hearing of an ordinary summons, provided that the Court may in its discretion direct the proof of any debt to be adjourned upon any terms that it may think fit, and may thereupon either adjourn the further consideration of the application or proceed to determine the same, in which latter case such debt, if and when proved, shall be added to the schedule of proved debts.

(5) The debtor shall answer all questions put or allowed by the Court.

(6) Any creditor who has proved, and by leave of the Court any creditor the proof of whose debt has been adjourned, and with the like leave any other person on behalf of any such creditor, shall be entitled to be heard and to adduce evidence.

(7) Where the debtor proposes to pay a composition no administration order other than for payment in full shall be made where the composition is dissented from by a majority in number and value of the creditors who have no power to distrain and who do not hold security.

(8) The dissent of the creditors may be given orally at the hearing or by written notice to the registrar, in the Form No. 3 in the Appendix.

(9) Where it appears that the conduct of the debtor has been such that, if the debtor were applying for the sanction of a composition or scheme under section 18 of the Act, the Court might refuse its sanction, the Court may refuse to make an administration order.

(10) No administration order shall be made under which payments shall be extended over a period of more than six years from the date of the order.

Proceedings when order made.

7. The administration order shall be in the Form No. 4 in the Appendix, and, when made, a copy thereof shall be sent by post by the registrar to the debtor, but it shall not be necessary to prove the receipt thereof by the debtor before taking any proceedings upon the order.

Notice of the order having been made shall be sent to each creditor; the notice shall be sent by post, and shall be in the Form No. 5 in the Appendix.

Objections under sub-section 11.

8. Any creditor entitled to object under sub-section 11 of section 122 of the Act, to any debt scheduled must give notice in writing to the registrar of his objection and of the grounds thereof, and the registrar shall thereupon name a day when the objection may be heard. An application to allow the objection shall be heard *ex parte* in the first instance by the Judge or registrar, who may dismiss the application, or may direct it to be renewed upon notice being given to such persons and upon such terms as to security for costs and otherwise as he may think fit.

9. After an administration order has been made no creditor to whom notice of hearing of the request has been duly sent under Rule 4 shall be entitled to object to any debt comprised in the schedule to the order, or to the manner in which payment is directed to be made by the order, unless, within two months from the date of the order, he proves to the satisfaction of the registrar that the notice did not reach him and that he has not received reasonable notice of the proceedings in any other manner. Objections after time.

10. Any creditor desiring to prove a debt under sub-section 12 of section 122 of the Act shall send in his claim in writing to the registrar, who shall thereupon send notice of the claim to the debtor in the Form No. 9 in the Appendix. Proof under sub-section 12.

11. If the debtor does not appear and dispute the claim within the period allowed by the notice, the claim shall be deemed to be proved, and shall be added to the schedule to the order accordingly, and notice of the addition shall be sent to the creditor. Proceedings if claim not disputed.

12. If the debtor objects to the claim and gives notice of his objection in the Form No. 9 in the Appendix, the registrar shall appoint a day for the hearing of the objection and give notice of the time for hearing to both parties. Proceedings if claim disputed.

13. If the Court thinks fit, or is so requested by the majority of the creditors present at the hearing of the request who may have proved, the Court may appoint any person to have the conduct of the order, and may at any time afterwards remove him. Conduct of order.

It shall be the duty of any person so appointed to take all proper proceedings for enforcing the terms of the order, but in case of his neglect to proceed or of urgency any creditor may take such proceedings. Judgment-summons to enforce order.

14. A judgment-summons shall be issued without fee and be served personally five clear days before the return day thereof, and all proceedings thereon shall be taken in like manner as if it were a judgment-summons issued in an action in the County Court, except that the debtor (as provided by the statute) must prove that he has not had the means to pay the sum in respect of which he has made default; and the Judge, if satisfied that the debtor has not had the means to pay the sum in respect of which he has made default, may direct that the order of administration shall be deemed to have been suspended during the period covered by the default.

15. Where an administration order has at any time heretofore been or shall hereafter be made, such order may at any time be set aside or rescinded by the Court in any of the following cases; namely, Rescission of order.

(1) Where two or more of the instalments ordered to be paid are in arrear.

(2) Where the debtor has wilfully inserted in the list attached to his request the wrong name or address of any of his creditors, or has wilfully omitted therefrom the name of any creditor.

(3) Where the debtor subsequent to the date of the order has obtained credit to the extent of £2 or upwards without informing the creditor that he has an administration order.

(4) Where the order has been obtained by fraud or misrepresentation.

(5) Where a receiving order has since the date of the administration order been made against the debtor.

16.—(1) Where an order is set aside or rescinded under the last preceding rule, it shall be without prejudice to anything already done or suffered under the order. Effect of rescission.

(2) Any money paid into Court under the order may be dealt with as if the order had not been set aside or rescinded.

RULES 16—24.

(3) Notice shall be sent by the registrar to every creditor named in the schedule that the order has been set aside or rescinded.

Suspension of order.

17. Where it appears that the debtor is unable to pay any instalment, by reason of illness or other unavoidable misfortune, the Judge or registrar may from time to time suspend the operation of the order for a term not exceeding three months, or make a new order for payment by instalments.

Second request.

18. Where the debtor has filed a request for an administration order, and the Court has refused to make the order, or when an order has been rescinded, the debtor shall not be allowed to file another request in the same or any other Court without first obtaining the leave of the Court first mentioned.

Suspension of order pending committal.

19. When an order of committal is made upon the hearing of any judgment-summons, and the execution of the order is suspended for a specified time to enable the debtor to pay the amount in respect of the non-payment of which the order was made, the order of administration for payment shall be also suspended during that time.

Calculation of arrears.

20. In calculating the amount in arrear under an order of administration any instalments accruing due during the period for which such order has been suspended shall not be reckoned in that amount.

Payment of debts *pari passu*.

21. All persons scheduled as creditors under sub-section 12 of section 122 of the Act, before the order of administration is superseded under sub-section 13 of the Act, shall rank *pari passu inter se*, subject to the priority given by sub-section 12 to those creditors who are scheduled as having been creditors before the date of the order of administration, but no payment made to any such creditor by way of dividend or otherwise shall be disturbed by reason of any subsequent proof by any other creditor under sub-section 12.

Registrar's accounts.

22. The registrar shall keep account of the moneys received and payments made under any administration order in such manner as may be from time to time directed by the Commissioners of Her Majesty's Treasury.

Use of forms.

23. The Forms in the Appendix hereto, with such variations as circumstances may require, shall be used for the purposes of these Rules and of section 122 of the Act.

Construction of rules.

24. In the construction of these Rules, unless there is anything in the subject or context repugnant thereto, words shall have the same meaning as in the County Courts Act, 1888, and the Rules and Orders made thereunder.

JUDICIAL ORDERS AND REGULATIONS UNDER THE BANKRUPTY ACT, 1883.

Assignment of Bankruptcy to Judge of High Court.— Bankruptcy business under the Act was originally assigned to Mr. Justice Cave, then to Mr. (now Lord) Justice Vaughan Williams, and subsequently to Mr. Justice Wright.

Assignment of Bankruptcy Business to Queen's Bench Division.—By an order of January 1, 1884, it was directed that on and after the first day of January, 1884, all matters pending in the London Bankruptcy Court at the commencement of the said Act, and all matters which would have been within the exclusive jurisdiction of the London Bankruptcy Court if the said Act had not passed, and all matters in respect of which jurisdiction is given to the High Court by the said Act, should be assigned, until further order, to the Queen's Bench Division of the High Court of Justice.

Order of the Lord Chancellor under s. 103.—I, THE RIGHT HONOURABLE ROUNDELL, EARL OF SELBORNE, Lord High Chancellor of Great Britain, by virtue of the 103rd section of the Bankruptcy Act, 1883, and all other powers enabling me in that behalf, do hereby order that on and after the 1st day of January, 1884, the jurisdiction and powers under section 5 of the Debtors Act, 1869, now vested in the High Court of Justice, shall be assigned to and exercised by the Judge to whom bankruptcy business is assigned. [The remainder of this order was annulled by the Order of 4th of March, 1885, *post.*]

The 1st day of January, 1884. (*Signed*) SELBORNE, C.

Order as to the 5th Section of the Debtors Act, 1869.—I, THE RIGHT HONOURABLE ROUNDELL, EARL OF SELBORNE, Lord High Chancellor of Great Britain, by virtue of the 103rd section of the Bankruptcy Act, 1883, and all powers enabling me in that behalf, do hereby order that from and after the fourth day of April, 1885, so much of a certain order made by me, by virtue of the said section and powers, dated the first day of January, 1884, as ordered that the jurisdiction and powers under the 5th section of the Debtors Act, 1869, vested in the High Court of Justice should be delegated to and exercised by the bankruptcy registrars of the High Court, subject to an appeal by any person affected by any order or decision of such registrars to the Judge to whom bankruptcy business is assigned, and subject to a proviso that if any case should appear to the bankruptcy registrar to be one for committal, he should adjourn the same to be heard before the Judge to whom bankruptcy business is assigned, be and the same is hereby as from and after the date aforesaid rescinded, and the said Order shall thereafter be read and construed as if the words commencing "and do further order" down to the conclusion of the said Order were omitted therefrom: Provided always that nothing in this Order shall affect the proceedings in any debtor's summons taken out before

ORDERS.

a bankruptcy registrar at any time before the said fourth day of April, 1885, and that any such proceedings shall and may have effect and continue as if this Order had not been made.

Dated the Fourth day of March, 1885.

For Order Jan. 1, 1884, see *ante*, p. 273.

Order issued by the Judge of the High Court.—The *Bankruptcy Act*, 1883. *The first day of January*, 1884 :—

1. On and after the first day of January, 1884, until further order, the registrars in Bankruptcy of the High Court shall hear and determine at the Bankruptcy Buildings, Lincoln's Inn Fields, the following matters and applications which by the said Rules are directed to be heard and determined in open Court, that is to say :—

(*a*) The public examination of debtors;

(*b*) Applications to approve a composition or scheme of arrangement;

(*c*) Applications for orders of discharge or certificates of removal of disqualifications.

2. On and after the first day of January, 1884, until further order, the registrars in Bankruptcy of the High Court shall hear and determine at the Bankruptcy Buildings, Lincoln's Inn Fields, all matters and applications which by virtue of the said Rules may be heard and determined in Chambers, except the following matters and applications, that is to say :—

(*a*) Applications by a creditor for leave to commence any action or other legal proceedings under sect. 9;

(*b*) Deciding on the validity of an objection by the Board of Trade to the appointment of a trustee under sect. 21;

(*c*), (*d*) and (*e*) *rescinded;*

(*f*) Special cases stated for the opinion of the High Court under sect. 97;

(*g*) Applications to transfer actions under sect. 102 (4);

(*h*) Applications by the Board of Trade under sect. 102 (5);

(*i*) Applications by a trustee for leave to commence an action in the names of the trustee and of the bankrupt's partner under sect. 113;

[New Rule 94.] (*k*) Applications for the approval or for the amendment of issues of fact to be tried by a jury under Rule 84;

[New Rule 96.] (*l*) Applications for directions as to the trial of issues of fact under Rule 86; and

[New Rule 101.] (*m*) Applications for directions as to the trial of actions brought by a trustee under Rule 91.

3. Any matter or application which a registrar has jurisdiction to hear and determine under the above-mentioned Act and the General Rules made in pursuance thereof and this Order or any of them, except judgment-debtors' summonses under sect. 5 of the Debtors Act, 1869, shall be adjourned to be heard before the Judge:

(*a*) If all the contending parties require the matter or application to be so adjourned;

(*b*) If any of the contending parties, or, in the case of an *ex parte* motion, if the applicant requires the matter or application to be so adjourned and the registrar is of opinion that it involves a question of difficulty on the ground of novelty or otherwise.

4. Where any matter or application is adjourned to be heard by the Judge, the registrar shall certify to the Judge whether the matter or application is adjourned at the request of all or of some and which of the parties, and in the latter case the registrar shall also state shortly the question of difficulty involved.

5. Where any matter or application is so adjourned by a registrar

sitting in open Court, it shall be adjourned to be heard by the Judge in open Court. Where any matter or application is so adjourned by a registrar sitting in chambers it shall, if any of the contending parties, or, in the case of an *ex parte* motion, if the applicant so requires, be adjourned to be heard by the Judge in open Court, but otherwise it shall be adjourned to be heard by the Judge in chambers.

LEWIS W. CAVE.

Par. 1. Cf. Rs. 6, 7.

Par. 2. Cf. sect. 98, R. 6.

Pars. 3, 4, 5. Further as to adjournment from registrar to Judge, and from chambers to Court and *vice versâ*, see Rs. 8, 9, and Regulations, March 25, 1885, *infra*, pars 2, 5, 13.

Regulations for the Conduct of Business in Bankruptcy in the High Court.—1. Regulation 2 of the Order of January 1st, 1884, shall be read as if clauses (C), (D), and (E) were omitted therefrom.

2. All matters and applications in bankruptcy, which, by the Act or the Rules, or the general or special directions of the Judge, are to be heard before him, except matters and applications adjourned by a registrar to be heard by the Judge in chambers, will be heard in open Court, unless otherwise ordered.

3. All matters and applications for hearing before the Judge in open Court, except *ex parte* motions, shall be set down in a list to be kept at the office of the senior bankruptcy registrar, and will be heard in the order in which they are set down in such list, except in cases of emergency, or for any other sufficient cause.

4. *Ex parte* motions will be heard immediately on the sitting of the Court, before all other matters and applications, and in case of emergency may, by leave of the Judge, be made at any time during the day.

5. The hearing of applications for the committal of any person to prison, the hearing of objections by the Board of Trade to the appointment of a trustee, and the hearing of matters and applications adjourned by a registrar to be heard before the Judge in open Court, shall take place on such Monday during the sittings as the registrar shall appoint, or so soon thereafter as the matter or application can be heard.

6. Every notice of motion to be heard before the Judge shall name some Monday during the sittings for hearing the motion, and such motion will be heard on the Monday so named, or so soon thereafter as the motion can be heard.

7. All applications, matters, and summonses for hearing before the Judge in chambers shall be set down not later than 4 o'clock on the previous Friday in a list to be kept at the office of the senior bankruptcy registrar, and will be heard in the order in which they are set down in such list.

8. Applications for leave to issue a summons under section 5 of the Debtors Act, 1869, may be made *ex parte*, and without any affidavit. The applicant must produce a printed form of application for a summons properly filled up, which, if leave to issue the summons is given, will be endorsed by the Judge.

9. When it is intended to apply to the Judge for the costs of shorthand notes of the hearing of any motion or appeal, the application should be made in Court before the notes are taken. In the absence of special circumstances, an application for the costs of such notes will not be entertained if not made until after the notes have been taken.

10. An application for the Judge's notes of the evidence given upon a motion before him for use in the Court of Appeal may be made at

ORDERS. any time after the hearing; such application must be in writing, and must have the appropriate stamp affixed to it, and thereupon the notes will be transmitted by the Judge to the Court of Appeal. After such written application has been made either party may obtain a copy of the notes for the use of his counsel on application to the Judge's clerk, and on payment of a fee of 6*d.* per folio.

11. A Divisional Court will sit at the Royal Courts of Justice on every Tuesday during the sittings of the High Court, unless notice to the contrary is given.

12. The Judge will sit in open Court on every Monday during the sittings of the High Court, unless notice to the contrary is given.

13. The Judge will sit in chambers at 4 o'clock in the afternoon of every Monday during the sittings of the High Court (unless notice to the contrary is given) for the purpose of hearing matters and applications adjourned by the registrar to be heard before the Judge in chambers, and also for the purpose of hearing summonses under section 5 of the Debtors Act, 1869, and applications for leave to issue such summonses.

14. These Regulations shall be substituted for the Regulations of the 7th of January, 1884, and shall come into operation from and after the 4th of April next.

Dated the 25th day of March, 1885. (*Signed*) LEWIS CAVE.

Additional Regulation with respect to Applications for leave to issue Judgment Summonses under Section 5 of the Debtors Act, 1869.—*The Debtors Act*, 1869.—Where the amount remaining due on a judgment of the High Court exceeds £50, and the judgment debtor resides or carries on business within the London Bankruptcy District, a summons under section 5 of the Debtors Act, 1869, may be issued out of the High Court without further order.

June 8th, 1885. (*Signed*) LEWIS CAVE.

Cf. Rs. 355—6, *ante;* Regulations, March 25, 1885, pars. 5, 8, 13, *ante* p. 275.

Regulation of 18th of February, 1890, as to Appeals to the Divisional Court.—From and after the 22nd of February, 1890, every notice of motion by way of appeal shall state the grounds on which it is contended that the order appealed from is erroneous, and any objection that any of such grounds were not taken in the Court below shall be taken as a preliminary objection before the argument on that ground of appeal is commenced.

(*Signed*) LEWIS CAVE.
A. L. SMITH.

SCALE OF SOLICITORS' COSTS.(a)

I.—Petitioning Debtor's Solicitor's Bill of Costs.

COSTS.

1. *In Summary Cases under Section* 121.

(a) Where the assets are certified as not likely to realise £100 :—

	£	s.	d.	
Instructions for petition, search for prior petition, drawing and attesting petition, attending presentation and hearing thereof, attending official receiver with deposit, on giving him all necessary information after order made, and upon preliminary examination of debtor, attending public examination, drawing bill of costs, obtaining appointment to tax, and copy notice of and attendance at taxation (exclusive of Court fees and other proper disbursements) .	3	0	0	
Preparing order of adjudication on application of debtor under Rule 190	0	10	0	

(b) Where the assets are certified as likely to realise more than £100, but not to exceed £200 :—

Instructions for petition, search for prior petition, drawing and attesting petition, attending presentation and hearing thereof, attending official receiver with deposit, on giving him all necessary information after order made, and upon preliminary examination of debtor, attending public examination, drawing bill of costs, obtaining appointment to tax, and copy notice of and attendance at taxation (exclusive of Court fees and other proper disbursements) .	4	0	0	
Preparing order of adjudication on application of debtor under Rule 190	0	13	4	
The costs under these two heads (a) and (b) will not be liable to reduction under Rule 112.				But cf. R. 112A.

(c) Where the assets are certified by the official receiver as likely to realise more than £200, but not to exceed £300, three-fifths of the following charges, in accordance with the provisions of Rule 112, shall be allowed.

2. *In Non-Summary Cases.*

Instructions for petition :—

Where the assets are certified—

As not likely to realise £500	3	3	0
As likely to exceed £500, but not to exceed £1,000	4	4	0
,, 1,000, ,, 2,000	5	5	0
,, 2,000, ,, 3,000	6	6	0
,, 3,000, ,, 4,000	7	7	0
,, 4,000, ,, 5,000	8	8	0
,, 5,000, ,, 7,500	9	0	0
,, 7,500, ,, 10,000	10	10	0
,, 10,000, then the fee shall be increased by one guinea for every additional £2,500 or fraction of £2,500 beyond the first £10,000.			

(a) See generally as to costs, Rs. 108—128.

COSTS

	£	s.	d.
A certificate of the official receiver as to the value which the assets are likely to realise shall be produced to the taxing officer, and the allowance for instructions for petition made in accordance therewith.			
If the assets realise more than the amount certified by the official receiver, the fees may be calculated accordingly and the additional percentage shall be recoverable out of any assets available after payment of all costs, charges, and fees, if claimed in writing before the assets have been distributed by the trustee, and if the assets realise less than the amount so certified the excess of percentage shall be disallowed, and if paid shall be repaid to the trustee.			
In cases where a composition is accepted and confirmed by the Court the value of the assets shall be taken at the amount payable to the trustee or otherwise required for the purposes of composition.			
Search for prior petition	0	6	8
Drawing and attesting petition	0	13	4
Attending official receiver with deposit	0	6	8
Attending presentation and hearing of petition	0	10	0
Drawing receiving order and copy and attending passing	0	10	0
Preparing order of adjudication on application by debtor under Rule 190	1	0	0
Attending official receiver on receiving order being made and giving him all necessary information	0	13	4
Letters, messengers, &c.	0	6	0

3. *Debtor's Solicitor's Costs on consenting to a Receiving Order on Creditor's Petition.*

Instructions for drawing consent to receiving order (if a receiving order is made by consent within five days after service of petition):—			
Where the assets are certified by the official receiver—			
As not likely to realise £500	1	1	0
As likely to exceed £500, but not to exceed £1,000	1	11	6
,, 1,000, ,, 2,500	2	2	0
,, 2,500,	3	3	0
Preparing order of adjudication on application by debtor under Rule 190	1	0	0
Attending official receiver on receiving order being made, and giving him all necessary information	0	13	4
Letters, messengers, &c.	0	6	0
The charges under this paragraph shall not be allowed in cases falling under paragraph 1 (*a*) and (*b*).			

4. *Debtor's Solicitor's Costs on filing a Declaration of Inability to Pay.*

Instructions for drawing and attesting declaration of inability to pay, including affidavit of identity of debtor (where requisite)	0	13	4
Attending filing	0	6	8
The charges under this paragraph shall not be allowed in cases falling under paragraph 1 (*a*) and (*b*), or if the debtor subsequently files his own petition.			
The expense of an assignment shall not be allowed where a declaration of inability would answer the purpose.			

II.—Petitioning Creditor's Solicitor's Bill of Costs.

COSTS.

1.—*Where the Act of Bankruptcy is non-compliance with a Bankruptcy Notice.*

	£	s.	d.
Instructions for and preparing notice, and preparing request to issue	0	13	4
Attending filing	0	6	8
Notice and two fair copies	0	6	8
Attending sealing notice and copies	0	6	8
Service of notice	0	5	0
Affidavit of service of notice (where necessary) and attending swearing	0	6	8
Attending Court on hearing of notice and drawing order	0	13	4
If the debtor sets up a counter-claim or otherwise disputes the validity of the notice, all necessary charges in addition to the foregoing shall be allowed for perusals of affidavits, affidavits in reply or procuring *vivâ voce* evidence, and where it is necessary to instruct counsel the usual charges for brief and counsel's fees shall be allowed.			

2. *Proceedings on Petition.*

	£	s.	d.
Instructions for petition	1	0	0
Examining particulars of petitioning creditor's account	0	6	8
If the act of bankruptcy is default made upon a bankruptcy notice issued by the solicitor to the petitioner this last charge shall not be allowed.			
Where the act of bankruptcy arises under sub-sections 1, *a*, *b*, *c*, *d*, *e*, or *h* of section 4 of the Act, special attendances (where necessary) to examine witnesses as to the facts they can prove shall be allowed, the charges for which, and for summoning witnesses, or for affidavits, shall be in the discretion of the taxing officer according to the circumstances, and where it is necessary to instruct counsel to support the petition, the usual charges for brief and counsel's fees shall be allowed.			
Search for prior petition	0	6	8
If the solicitor resides at a distance :—			
Writing agent to search for prior petition	0	3	6
Agent's writing result of search	0	3	6
Drawing bankruptcy petition	0	10	0
Engrossing, where the petition exceeds 7 folios, per folio	0	0	4
Attesting signature of each petitioning creditor, except where petitioners are in partnership	0	6	8
Where petitioning creditor is a company or corporation with seal	0	13	4
Drawing and fair copy affidavit verifying petition	0	3	4
Attending petitioners to be sworn	0	6	8
Two copies of petition for sealing, per folio	0	0	4
Preparing subpœna and serving witnesses, or arranging with witnesses for their attendance on presentation of petition when necessary	0	13	4
Payment of witnesses (*see* Scale in No. VI.)			
The petitioning creditor shall not be regarded as a witness; he shall not be paid for loss of time, but shall be allowed his expenses of travelling and subsistence.			

COSTS.

	£	s.	d.
Attending official receiver with deposit	0	6	8
The amount of deposit is to be charged in the petitioning creditor's bill of costs.			
Attending on presentation of petition and investigation of the statements therein by the Court, and for clerk	1	0	0
Attending by agent	2	0	0
Where the solicitor resides at a distance from the Court his travelling expenses may be allowed, provided the total charge does not exceed costs of attendance by agent.			
Drawing order for hearing petition	0	3	4
Service of petition (*see* Scale in No. VI.)			
Affidavit as to act of bankruptcy, including drawing and attending swearing	0	6	8
Affidavit of petitioner's debt, including drawing and attending swearing	0	6	8
Where the debtor consents to an immediate receiving order, and does not employ his own solicitor:—			
Drawing and attesting consent, including affidavit of identity (when requisite):—			
Where the assets are certified—			
As not likely to realise £500	1	1	0
As likely to exceed £500 but not to exceed £1,000	1	11	6
As likely to exceed £1,000 but not to exceed £2,500	2	2	0
As likely to exceed £2,500	3	3	0
Attending Court on hearing petition	1	0	0
Attending by agent	2	0	0
Drawing receiving order and copy and attending passing	0	10	0
Attending official receiver after receiving order made, and giving him all necessary information	0	13	4
More than one attendance at the presentation or hearing of a bankruptcy petition shall not be allowed unless ordered and certified by the Court at the time.			
Attending Court where adjournment ordered	0	13	4
Attending by agent	1	0	0
Instructions for appointment of interim receiver	0	13	4
Drawing and copy application	0	5	0
Instructions for necessary affidavits in support, each	0	6	8
Drawing same, per folio	0	1	0
Fair copy, per folio	0	0	4
Attending deponents, each	0	6	8
Attending filing affidavits	0	6	8
Attending Court on hearing application	1	0	0
Attending by agent	2	0	0
Drawing order in duplicate and attending to pass	0	6	8
Attending official receiver with order, paying deposit and giving all necessary information	0	13	4
Letters, messengers, &c. (in discretion of taxing officer).			

3. *Costs for Substituted Service where the Debtor keeps out of the way to avoid Service.*

Preparing and making application to the Court for substituted service, including previous attendances to serve which have been without effect because the debtor was			

	£	s.	d.	COSTS.
keeping out of the way and could not be personally served (inclusive charge)	0	15	0	
Drawing affidavit of facts, showing that due pains had been taken to effect personal service, per folio	0	1	0	
Fair copy of affidavit, per folio	0	0	4	
Attending to swear and file affidavit and to obtain order for substituted service and drawing up order	0	13	4	

4. *Where the Debtor disputes the Statements in the Petition.*

Attending petitioner where the debtor has served notice of disputing the statements in the petition	0	6	8	
Special attendances shall be allowed to examine witnesses as to the facts they can prove, the charges for which, and for summoning witnesses, shall be in the discretion of the taxing officer, according to the circumstances; and where it is necessary to instruct counsel to support the petition, the usual charges for brief and counsel's fees shall be allowed.				
Attending Court when the receiving order is made . . .	1	0	0	
Attending by agent	2	0	0	

5. *Where the Debtor is required by the Court to enter into a Bond.*

Attending to make inquiries as to sufficiency of securities .	0	13	4	
This charge shall be subject to increase, according to the distance of the sureties' residence; and, where necessary, agency charges for making such enquiries shall be allowed.				
Drawing exceptions to sureties	0	3	4	
Service thereof on debtor's solicitor	0	5	0	
Attending Court when sureties allowed or disallowed . .	0	13	4	
The costs of the affidavits in opposition to the allowance of the bond for want of sufficiency of sureties shall be the same as of other special affidavits.				

III.—Special Costs.

	£	s.	d.
Instructions for appointment of a special manager	0	13	4
Drawing and copy application	0	5	0
Instructions for affidavits in support, not exceeding three in number, unless the taxing officer considers that further affidavits were necessary, each	0	6	8
Drawing same, per folio	0	1	0
Fair copy, per folio	0	0	4
Attendances on deponents, each	0	6	8
Attending official receiver to lodge papers, and to obtain appointment to hear application	0	6	8
Attending official receiver on hearing application	0	13	4

Proper charges for further attendances on creditors and other work necessarily done by a solicitor in connection with the appointment of a special manager shall be allowed, but no costs shall be allowed on an unsuccessful application unless the official receiver shall certify that the costs of the application should be allowed.

Attendance at public examination where the Court thinks such attendance necessary	1	1	0

The following costs subsequent to receiving order may also be allowed upon a certificate in writing of the official receiver that the attendance was necessary in the interests of the estate, and shall not be exceeded unless specially authorised by him :—

Attending official receiver upon preliminary examination of debtor	0	13	4
Attendance at first meeting of creditors	0	13	4

The petitioning creditor's solicitor may be allowed all proper charges at the rate specified in the scale for all work necessarily or usefully done in the interests of the creditors generally for the protection or benefit of the estate between the presentation of the petition and the date of the receiving order, if the official receiver shall certify that the work done was necessary or useful. Such certificate may be given by the signature of the official receiver to a memorandum containing such certificate at the foot of the bill of costs.

In exceptional cases where the petitioning creditor's solicitor has prior to the presentation of the petition rendered special services in the interests of the creditors generally, and such services shall have assisted to preserve or increase the assets, or otherwise been of substantial advantage to the estate, the taxing officer may, upon a certificate signed by the official receiver to that effect, which may be given by a memorandum containing such certificate at the foot of the bill of costs, allow all proper charges for such services at the rate specified in the scale.

Where the official receiver employs the petitioning creditor's solicitor or the debtor's or other solicitor to take any steps for the protection or benefit of the estate or in other matters not included in the foregoing scale, the costs of work done under such em-

	£	s.	d.	COSTS.
ployment shall, in the absence of any special agreement with the official receiver, be subject to taxation under Scale No. VI.				

IV.—Taxation of Petitioner's Costs.

Drawing bill of costs and copy, and notice of and attendance at taxation:—			
On debtor's petition	0	15	0
On creditor's petition (when costs do not exceed £10)	0	15	0
With an additional allowance where costs exceed £10 of 5 per cent. on the amount of the bill, provided that the total fee shall not exceed £5.			

No charges, except those included under the preceding scales, shall be allowed in the case of a debtor's petition or unopposed creditor's petition unless in the latter case the taxing officer considers that for special reasons additional items may be allowed.

Where the petition is opposed, costs may be allowed in addition for necessary matters, not provided for under the preceding scales or under Scale No. VI.; such allowances shall be made in conformity with that scale as nearly as may be, or with the scales of costs in the Supreme Court, according to the nature of the proceeding.

V.—Debtor's Solicitor's Costs.

1. *Where the Court allows Costs to the Debtor on a Bankruptcy Notice being set aside.*

Instructions to apply to set aside bankruptcy notice	0	6	8
Perusing and considering bankruptcy notice	0	5	0
Instructions for affidavit of counter-claim	0	6	8
Drawing same, per folio	0	1	0
Fair copy, per folio	0	0	4
Attending to file, and drawing application for appointment to hear and notice	0	6	8
Costs of further affidavits, or of procuring *vivâ voce* evidence, and of other incidental charges properly incurred, including where necessary usual charges for brief and fees to counsel, shall be allowed in the discretion of taxing officer.			
Attending Court on application:—			
If heard	1	1	0
If adjourned	0	10	6
Drawing order and copy, and attending to pass	0	6	8
Letters, messengers, &c. (in discretion of taxing officer).			
The debtor's personal expenses for travelling and loss of time shall be allowed according to the scale for witnesses.			

2. *Where the Court allows Costs to the Debtor on Dismissal of Petition.*

Attending debtor served with copy of petition and taking instructions to show cause	0	6	8
Drawing notice to show cause	0	5	0
Two fair copies for service	0	2	0
Attending filing	0	6	8

COSTS.

	£	s.	d.
Service on creditor, including postage	0	2	6
Service on creditor's solicitor	0	2	6
Perusing and considering petition	0	6	8
Special attendances shall be allowed to examine witnesses as to the facts they can prove, the charges for which and for summoning witnesses shall be in the discretion of the taxing officer according to the circumstances, and where it is necessary to instruct counsel the usual charges for brief and counsel's fees shall be allowed.			
Attending Court on petition:—			
If heard	1	1	0
If adjourned	0	10	6
Drawing order and copy, and attending to pass	0	6	8
Letters, messengers, &c. (in discretion of taxing officer).			
The debtor's personal expenses for travelling and loss of time shall be allowed according to the scale for witnesses.			

VI.—Miscellaneous and General Costs.

1. *Costs of the Day on Adjournment where no fixed amount is named in the Order.*

	£	s.	d.
Attendance in Court	0	13	4
Drawing order and passing	0	6	8
Attending counsel	0	6	8
Notice to witnesses, each	0	2	6
Payment to witness (*see* scale below).			

2. *Warrants.*

Warrant, warrant of seizure, or search warrant	0	7	0
And if more than four folios, for each folio beyond four	0	1	4

3. *Service.*

Service of petition, order, notice, or other process, each service	0	5	0
If the distance be more than two miles, 1*s.* per mile on such further distance, or a sum, in the discretion of the taxing officer, according to circumstances.			
Service by post, including postage	0	2	6
Special service under an order (in discretion of taxing officer).			
In cases of great distance, the service shall be by agent, unless otherwise sanctioned.			

4. *Instructions.*

For statement of facts, or special case for the opinion of the Court, Judge, or registrar.	0	13	4
For record for trial	0	13	4
For motion	0	6	8
For motion on appeal	0	13	4
For any proceeding or application not otherwise provided for	0	6	8
For application for directions	0	6	8
For application for substituted service	0	6	8
To appear on hearing of a matter under Rule*	0	13	4
For special affidavits	0	6	8
For proposal for scheme of arrangement or composition	0	6	8
For case for opinion of counsel	0	6	8
For brief on hearing, trial, or determination of any petition, issue of fact, special case, or motion, other than an interlocutory motion before the Court or a Judge or a registrar of the High Court	1	1	0
For such brief and for brief on hearing on an appeal, when witnesses are to be examined or cross-examined, such fee may be allowed as the taxing officer shall think fit, having regard to all the circumstances of the case, and to other allowances (if any) for attendances on witnesses and procuring evidence.			
For brief on hearing any interlocutory motion	0	6	8
(or such further sum as the taxing officer may allow).			
For brief or any other proceeding not otherwise provided for, such fee as the taxing officer may allow.			

* R. 299 is no doubt meant. See scale issued July 29, 1886.—Auth.

COSTS.

5. *Drawing Documents.*

	£	s.	d.
Commission or order for examination of witnesses abroad, per folio	0	1	0
Other orders, where necessary, per folio	0	1	0
Proposal for scheme of arrangement or composition, per folio	0	1	0
Application for an appointment before a Judge or registrar, and copy	0	5	0
Briefs and cases for opinion of counsel, per folio	0	1	0

6. *Perusals.*

Of notice of motion by the solicitor of the party on whom the same is served	0	6	8
Or, if exceeding 20 folios, per folio	0	0	4
Of documents (by London agent) on an appeal	1 1 0 to 2 2 0		
Of affidavits, depositions, and exhibits by the solicitor of the party against whom the same can be read, per folio	0	0	4
Of other documents where necessary, per folio	0	0	4

7. *Attendances.*

At Court on application to prosecute a petition in a particular district, or to transfer petition from one district to another	0	13	4
On application for directions	0	13	4
At Court on application for warrant, warrant of seizure, or search warrant	0	13	4
Instructing officer as to execution of warrant, warrant of seizure, or search warrant	0	6	8
To file affidavits	0	6	8
General attendances, each	0	6	8
Long and special attendances (or more, in the discretion of the taxing officer).	0	13	4
At meetings of creditors (other than first meetings) or of committees of inspection when duly authorised and necessary, per hour	0	10	0

8. *Letters, Telegrams, etc.*

Writing letters, each, special	0	5	0
Ditto, common	0	3	6
Circular letters, original letter, if special	0	5	0
Ditto ditto if common	0	3	6
For each copy thereof, including addressing and despatching, not exceeding 10	0	1	0
If above 10 in number letters shall be printed, and there shall be allowed for each copy addressed and despatched in addition to printer's charges	0	0	6
Preparing and attending to despatch necessary telegrams	0	5	0

VII.—General Regulations.

1. All costs, save as in this scale provided, which shall be properly incurred under the provisions of the Act or Rules, shall be allowed on the "Lower Scale" in Appendix N. to the Rules of the Supreme Court, 1883.

2. In respect of business connected with sales, purchases, leases, mortgages, and other matters of conveyancing, and in respect of other business not being business transacted in Court or in chambers, and not being otherwise contentious business, the solicitor's remuneration shall (in the absence of any agreement to the contrary) be regulated by the General Order under the Solicitors' Remuneration Act, 1881, for the time being in force; provided that, in cases of sales of mortgaged properties, the trustees' solicitor, if his remuneration shall be under Schedule 1 of the existing Order, shall only be entitled to percentage upon so much of the proceeds of sale as shall not be chargeable by the mortgagees' solicitor with the percentage, and such percentage shall be payable only out of the proceeds of sale.

3. All Court fees and other proper disbursements shall be allowed in addition to the remuneration in this scale provided.

4. Extra allowance for length of sittings, or other increased allowances not inconsistent with this scale, may be allowed, provided that any such allowance shall have been ordered and certified by the Court at the time, or all such charges will be disallowed.

5. Vouchers shall be produced on taxation for all payments, or such payments shall be disallowed.

6. Bills of costs shall be written lengthwise on one side only, distinguishing, by insertion in separate columns, costs out of pocket from charges for work done and time expended. Dates shall be furnished to each item, but they must not be written in the margin, which shall be left clear for taxation.

7. The fees allowed for drawing any affidavit or other document shall include any copy made for the use of the solicitor, agent, or for counsel to settle.

8. No instructions for an affidavit shall be allowed when the solicitor or his clerk makes the affidavit.

9. The allowances for instructions and drawing an affidavit in answer to interrogatories and other special affidavits, and attending the deponent to be sworn, shall include all attendances on the deponent to settle and read over.

10. The fees allowed for delivery of documents, services, and notices shall not be allowed when the same solicitor is for both parties, unless it be necessary for the purpose of making an affidavit of service.

11. The fees allowed for perusals shall not apply where the same solicitor is for both parties.

12. Where the same solicitor is employed for two or more persons having the same interest, and separate papers are delivered, or other proceedings had by or for two or more such persons separately, the taxing officer shall consider in the taxation of such solicitor's bill of costs, either between party and party, or between solicitor and client, whether such separate papers or other proceedings were necessary or proper; and if he is of opinion that any part of the costs occasioned thereby has been unnecessarily or improperly incurred, the same shall be disallowed.

13. A folio is to comprise seventy-two words, every figure comprised in a column or authorised to be used being counted as one word.

14. In special cases where counsel are not instructed to appear in Court and the solicitor acts as advocate, a charge by the solicitor for

COSTS.

the preparation of minutes of fact or evidence for his own use may be allowed, and in addition such special fee as the taxing officer may think fit, having regard to the nature and importance of the case and the questions involved.

15. As to all fees or allowances which are discretionary, the same are, unless otherwise provided, to be allowed at the discretion of the taxing officer, who in the exercise of such discretion is to take into consideration other fees and allowances to the solicitor and counsel, if any, in respect of the work to which any such allowance applies, the nature and importance of the matter, the amount involved, the interest of the parties, the estate or persons to bear the costs, the general conduct and costs of the proceedings, and all other circumstances.

16. Any person who may be dissatisfied with the allowance or disallowance by the taxing officer in any bill of costs taxed by him of the whole or any part of any items, may at any time before the certificate or allocatur is signed, carry in before the taxing officer an objection in writing to such allowance or disallowance, specifying therein by a list, in a short and concise form, the items or parts thereof objected to, and the grounds and reasons for such objection, and may thereupon apply to the taxing officer to review the taxation in respect of the same.

17. Upon such application the taxing officer shall reconsider and review his taxation upon such objection, and he may if he shall think fit receive further evidence in respect thereof, and if so required by the solicitor or any person interested he shall state either in his certificate of taxation or allocatur or by reference to such objection the grounds and reasons of his decision thereon and any special facts or circumstances relating thereto.

18. Any person who may be dissatisfied with the certificate or allocatur of the taxing officer as to any item or part of an item which may have been objected to as aforesaid, may within fourteen days from the date of the certificate or allocatur or such other time as the Court or Judge or taxing officer at the time he signs his certificate or allocatur may allow, apply to the Judge for an order to review the taxation as to the same item, or part of an item, and the Judge may thereupon make such order, as the Judge may think just; but the certificate or allocatur of the taxing officer shall, subject to the provisions of the Bankruptcy Rules for the time being relating to the review of taxations at the instance of the Board of Trade where the taxation has been made by a registrar of a County Court, be final and conclusive as to all matters which shall not have been objected to in manner aforesaid.

19. Such application shall be heard and determined by the Judge upon the evidence which shall have been brought in before the taxing officer, and no further evidence shall be received upon the hearing thereof unless the Judge shall otherwise direct.

20. The allowances to witnesses in Bankruptcy proceedings in the High Court shall be in accordance with those for the time being ordinarily made in other proceedings in the said Court. In the County Courts such allowances shall be in accordance with the scale for the time being in force in the County Courts.

VIII.—Scale of Allowances to Brokers and Accountants, &c.

The following charges to the end shall be subject to reduction by agreement with the official receiver or the trustee, or to increase with the sanction of the committee of inspection and the official receiver.

1. *Broker's Allowances.*

	£	s.	d
For inventory, only, of chattel property and one copy (not exceeding 5 folios)	0	10	6
For every additional folio beyond five, and one copy	0	1	6
For every half-hour or fraction of half-hour necessarily occupied in going to and from the premises where the inventory has to be made, if situate more than one mile from the broker's office	0	2	6

For inventory and valuation of chattel property:—

	£	s.	d.	
On the first £100	2	10	0	per cent.
On the next £400	1	5	0	,,
Above up to £10,000	1	0	0	,,
Above £10,000	0	10	0	,,

In addition, the broker shall be entitled to railway fare or cab hire actually paid, if the distance exceeds one mile, but when beyond five miles the amount shall be in the discretion of the taxing officer, but shall not exceed the actual expense of travelling.

2. *Auctioneer's Charges.*

For sales by private contract based on the valuation, half the above charges for inventory and valuation.

For sales by auction, including all expenses except newspaper advertisements, which require in each case to be authorised at the time by the official receiver or the trustee:—

Of chattel property not exceeding:—

	£	s.	d.	
On the first £100	10	0	0	per cent.
On the next £400	5	0	0	,,
Above up to £1,000	4	0	0	,,
Above £1,000	2	10	0	,,

Of estates, freehold, leasehold, &c., including prior valuations, for determining amount of reserve bids:—

	£	s.	d.	
On the first £300	5	0	0	per cent.
On the next £1,600	2	10	0	,,
Above up to £5,000	1	5	0	,,
Above £5,000	1	0	0	,,

No higher allowance to be sanctioned without the leave of the Board of Trade.

Costs of surveys, dilapidations, and specifications in discretion of taxing officer	2	0	0
	to		
	5	0	0

COSTS.

3. *Accountant's Charges.*

Where the employment of an accountant has been duly sanctioned, and in the absence of any special arrangement with the official receiver or the trustee for a smaller amount, the following charges may be allowed:—

	£	s.	d.
For preparing balance sheet, investigating accounts, &c., principal's time, exclusively so employed, per day of seven hours, including necessary affidavit. . .	1	1	0
	to		
	5	5	0
Or such other sum as the Court may under special circumstances order.			
Chief Clerk's time	0	10	6
	to		
	1	11	6
Other clerk's time, per day of seven hours . . .	0	7	6
	to		
	0	16	0

These charges shall include stationery, except the forms used.

BANKRUPTCY ACTS, 1883 AND 1890.

ORDER AS TO FEES AND PERCENTAGES.

FEES AND PERCENTAGES.

I, the Right Honourable Hardinge Stanley Baron Halsbury, Lord High Chancellor of Great Britain, Do, by virtue of the powers vested in me by the Bankruptcy Act, 1883, prescribe that the fees and percentages in the scale hereto annexed shall, from and after the 1st day of January, 1891, be the fees and percentages to be charged for or in respect of proceedings under the said Act and the Bankruptcy Act, 1890, and shall be taken in any Court having jurisdiction in bankruptcy and in any office connected with any such Court, and in the Board of Trade and any office connected therewith, and by any officer paid wholly or partly out of public money attached to any such Court or to the Board of Trade.

(*Signed*) HALSBURY, C.

Dated the 18th day of December, 1890.

SCALE OF FEES AND PERCENTAGES.

TABLE A.

	£	*s.*	*d.*
Every declaration by a debtor of inability to pay his debts .	0	5	0
Every bankruptcy notice	0	5	0
Every bankruptcy petition	5	0	0
NOTE.—Where on a debtor's petition the official receiver gives a certificate that there is reasonable ground for believing that the assets are sufficient to meet the expenses of administration this fee shall not be charged.			
Every bond with sureties	0	10	0
Every affidavit filed, other than proof of debts	0	2	0
Every subpœna or summons under section 27 of the Act of 1883	0	1	0
For taking an affidavit or an affirmation, or attestation, upon honour in lieu of an affidavit or a declaration, except for proof of debts and except declaration by a shorthand writer under Rule 67 (Form 38), for each person making the same	0	1	6
And in addition thereto for each exhibit therein referred to and required to be marked.	0	1	0
On every proof of debt above £2 (other than proof for workmen's wages under Rule 220)	0	1	0
For registrar of County Court certifying lists of proofs in each bankruptcy under Rule 225A.	0	2	0
Every petition under section 125 of the Act of 1883 . .	5	0	0

FEES AND PERCENTAGES.		£	s.	d.
	Every receiving order under section 103 of the Act of 1883	5	0	0
	Every application for an order of discharge, including expense of gazetting	1	10	0
	And for each creditor to be notified	0	1	0
	Every application for search, other than by petitioner, trustee, bankrupt, or any officer of the Court	0	1	0
	Every application to the Court except by the official receiver when acting either as official receiver or trustee	0	5	0
	Every office copy, each folio of 72 words	0	0	4
	On every record of trial (or such less sum as the Court may specially order)	5	0	0
	Every allocatur by the taxing officer of the Court for any costs, charges, or disbursements,			
	Where the amount allowed shall not exceed £4	0	2	0
	Where the amount exceeds £4 for every £2 allowed or a fraction thereof	0	1	0
	Every application to an official receiver to appoint a special manager or to carry on the business of a debtor	0	5	0
	Every application by a committee of inspection to the Board of Trade for a local banking account	1	0	0
	Every order of the Board of Trade for a local banking account	2	0	0
	Every application by a trustee to an official receiver acting as committee of inspection under rule 337:—			
	Where the assets are certified by the official receiver as not likely to realise more than £500	0	5	0
	Where the assets are likely to exceed £500	0	10	0
	Every application under section 162 of the Act of 1883 to the Board of Trade for payment of money out of the Bankruptcy Estates Account; and every application for the re-issue of a lapsed cheque or money order in respect of moneys standing to the credit of the Bankruptcy Estates Account	0	2	6
	Every application to the Court to approve a composition, a fee computed at the following rates on the gross amount of the composition, viz., £1 on every £100 or fraction of £100, up to £5,000, and 10s. on every £100 or fraction of £100 beyond £5,000.			
	Every application to the Court to approve a scheme of arrangement, a fee computed at the following rates on the gross amount of the estimated assets (but not exceeding the gross amount of the unsecured liabilities), viz., £1 on every £100 or fraction of £100 up to £5,000, and 10s. on every £100 or fraction of £100 beyond £5,000.			
	Provided that where a fee has been taken on a previous application to the Court to approve a composition or scheme, or where a fee has been paid under this table on the cash book submitted for audit, seven-eighths of the amount thereof shall be deducted from the fee payable on an application to approve a composition or scheme.			
	On one copy of the cash book, showing assets realised, forwarded by the official receiver or trustee to the Board of Trade, a fee according to the following scale on the gross amount of the assets realised and brought to credit, viz.: £1 on every £100 or fraction of £100 up to £5,000, and 10s. on every £100 or fraction of £100 beyond £5,000. Provided that, where a fee has been taken on an application to			

approve a composition or scheme of arrangement, seven-eighths of the amount thereof shall be deducted from this fee.

On every application for release by trustees in non-summary cases a fee of 2*s.* 6*d.* on every £100 or fraction of £100 of assets realised and brought to credit.

TABLE B.

	£	*s.*	*d.*	
For every receiving order made on a debtor's petition, where the fee on the petition has been dispensed with in pursuance of the official receiver's certificate as to sufficiency of assets	5	0	0	
For every order of administration made on transfer of proceedings under section 125 (4) of the Act of 1883 and section 21 (2) of the Act of 1890	5	0	0	

On the net assets realised or brought to credit by the official receiver, whether acting as interim receiver, receiver, or trustee, after deducting any sums paid to secured creditors in respect of their securities and not being assets realised by a special manager, or moneys received and spent in carrying on the business of the debtor, and on the net assets realised by an official receiver when acting as trustee to administer a debtor's property under a composition or scheme, after deducting any sums paid to secured creditors in respect of their securities, and not being moneys received and spent in carrying on the business of a debtor, a percentage according to the following scale:—

	£	*s.*	*d.*	
On the first £1,000 or fraction thereof	5	0	0	per cent.
On the next £1,500	4	0	0	,,
On the next £2,500	3	0	0	,,
On the next £5,000	2	0	0	,,
On all further sums	1	0	0	,,

On the amount distributed to creditors by the official receiver when acting as trustee under a composition:—

	£	*s.*	*d.*	
On the first £500 or fraction thereof	2	0	0	per cent.
On the next £500	1	10	0	,,
On the next £1,000	1	0	0	,,
On all further sums	0	10	0	,,

On the amount distributed in dividend by the official receiver, when acting as trustee under adjudications, schemes, or orders of administration of the property of a deceased insolvent, a percentage according to the following scale:—

	£	*s.*	*d.*	
On the first £1,000 or fraction thereof	2	10	0	per cent.
On the next £1,500	2	0	0	,,
On the next £2,500	1	10	0	,,
On the next £5,000	1	0	0	,,
On all further sums	0	10	0	,,

	£	*s.*	*d.*
For the official receiver acting as interim receiver of the property of a debtor in addition to the percentage chargeable on realisations, on every order	3	0	0

And in addition, where the order is in force for a longer period than fourteen days for every seven days, after

FEES AND PERCENTAGES.

	£	s.	d.
the first fourteen, and for every fraction of seven days	1	0	0
For each notice by an official receiver to a creditor of a first or any other meeting, or sitting of the Court:—			
Where the estimated value of the assets exceeds £100, each notice	0	1	0
Where the estimated value of the assets does not exceed £100:—			
On the first twenty notices, each notice	0	1	0
For each notice above twenty	0	0	6
For each notice by an official receiver to a creditor of an adjourned meeting or an adjourned sitting of the Court	0	0	6
For the official receiver supervising a special manager or the carrying on of a debtor's business, where the estimated assets exceed £100, a fee according to the following scale:—			
If the gross assets are estimated by the official receiver not to exceed £500	£1 per week.		
If to exceed £500 but not to exceed £5,000	2 ,,		
If to exceed £5,000 but not to exceed £10,000	3 ,,		
If to exceed £10,000 but not to exceed £20,000	4 ,,		
If to exceed £20,000	5 ,,		
Room for meeting or adjourned meeting of creditors summoned by official receiver, for each creditor to whom notice has been given of such meeting, but not exceeding in summary administrations £2 for each meeting: and in non-summary administrations not exceeding £5 for each meeting	£ 0	s. 1	d. 0
Travelling, keeping possession, and other reasonable expenses of official receiver, the amount disbursed	—		
For official stationery, printing, books, forms, and postages, each estate:—			
For every ten applications to debtors to an estate, or fraction of ten	0	2	0
For every ten creditors or fraction of ten where the estimated assets exceed £100	0	10	0
Where the estimated assets do not exceed £100:—			
For every ten creditors or fraction of ten up to twenty	0	10	0
For every ten creditors or fraction of ten above twenty	0	5	0
On every payment under section 162 of the Act of 1883 of money out of the Bankruptcy Estates Account threepence on each pound or fraction of a pound to be charged as follows:—			
Where the money consists of unclaimed dividends, on each dividend paid out;			
Where the money consists of undistributed funds or balances, on the amount paid out.			

TABLE C.

	£	s.	d.
High bailiff for attending sittings of the Court, under each receiving order, in summary cases, per case	0	4	0
High bailiff for attending Court in non-summary cases, per case	0	6	0

	£	s.	d.	FEES AND PERCENTAGES.
Serving every bankruptcy notice, bankruptcy petition, or subpœna or receiving or other order (not serviceable by post) within two miles, including affidavit of service . .	0	3	6	
If serviceable by post	0	1	0	
Executing every warrant of seizure or search warrant, or warrant of apprehension, or order of commitment within two miles of Court	0	10	0	
Keeping possession under a warrant for each day the man is actually in possession; including affidavit of possession being actually kept	0	4	6	
(not less than 3s. 6d. of the above sum is to be paid to the man in possession, and his receipt produced)				
High bailiff's or (in the London district) officer's man, travelling to place of possession, or to execute a warrant of or order of commitment, or to serve a summons or subpœna, or for any other purpose specially directed by the Court, per mile	0	0	5	
His time, per day, where distance exceeds ten miles . .	0	4	6	
His expenses, per day	0	4	6	
If high bailiff of a County Court or bankruptcy officer of Supreme Court directed by the Court personally to travel, per mile	0	0	7	
His time, per day	0	10	0	
His expenses, per day	0	10	0	

Table D.

The fees and allowances payable on proceedings had after the 1st day of January, 1891, in respect of any matter which was pending in any Court having jurisdiction in bankruptcy on the thirty-first day of December, 1883, shall be the same as if those proceedings had been taken before such last-mentioned day, and shall be applied to the same purposes: Provided that where the official receiver acts as trustee under the provisions of sections 159, 160, and 161 of the Act of 1883, the fees payable shall be the same scale as that provided under Table B. for realisations and distributions by the official receiver when acting as trustee under an adjudication.

Where the official receiver acting as trustee under sections 159, 160, or 161 executes any conveyance or transacts any legal or other business at the instance of third parties, the parties interested shall be required to pay for his time occupied and for that of his clerks according to such scale as the Board of Trade may from time to time prescribe, and to pay all legal or other necessary expenses incurred by him.

Table E.

For every order of administration under section 122, two shillings in the pound on the total amount of the debts scheduled from time to time, excluding any fraction of a pound in such total.

FEES AND PERCENTAGES.

TABLE F. (*a*).

On each account transmitted by a trustee under a deed of arrangement in pursuance of section 25 of the Bankruptcy Act, 1890, a fee upon the gross amount of the assets realised and brought to credit or the gross amount of the composition distributed during the period comprised in the account, according to the following scale:—

	£	*s.*	*d.*
On every £100 or fraction of £100 up to £500 . .	0	5	0
On every £100 or fraction of £100 above £500 . . .	0	2	6
Provided that the above fee shall not be chargeable on accounts transmitted by a trustee under a Deed of Arrangement registered prior to the 1st of January, 1891.			
On every application in pursuance of section 25 of the Bankruptcy Act, 1890, to inspect the accounts of a trustee under a deed of arrangement	0	1	0
For every copy of or extract from such account furnished by the Board of Trade, each folio of 72 words or figures	0	0	4

We, the undersigned lords commissioners of Her Majesty's Treasury, do hereby sanction the foregoing scales of fees and percentages, and do direct that the fees to be taken by stamps, shall be those mentioned in Tables A. and F., and that the fees mentioned in Tables B., C., D., and E. shall be taken in money, except that such of the fees and allowances referred to in Table D. as have hitherto been taken by stamps shall continue to be taken by stamps; the stamps to be used shall be bankruptcy fee stamps.

And we further direct that wherever practicable the stamp shall be affixed or the money paid in respect of every fee mentioned in Tables A., B., C., D., and F., before the proceeding is had in respect of which the fee is payable, and that the charge to be made by the *London Gazette* for the insertion of each notice authorised by the Acts or Rules shall be five shillings.

Dated the 19th day of December, 1890.

(*a*) As amended by Order of 11th of May, 1891.

ORDER AS TO STAMPS.

Order as to the fees and percentages which are required to be taken for bankruptcy proceedings in the High Court of Justice and Court of Appeal by means of stamps, amending the previous order on the same subject, published in the supplement to the *London Gazette*.

WHEREAS by section three of the Public Offices Fees Act, 1879, it is provided that the Treasury may from time to time make and when made, revoke, alter, and add to, regulations for all or any of the following purposes respecting fees in any public office, that is to say,—

(1) Regulating the manner in which the fees taken in money are to be taken, accounted for, and paid over.

(2) Determining the use of impressed or adhesive stamps, and the mode of cancellation of adhesive stamps.

(3) Regulating the use of stamps and prescribing the application thereof to documents from time to time in use, and requiring documents to be used for the purpose of such stamps.

Provided that so far as they relate to the office of any Court of Law, they shall be made with the consent of the Lord Chancellor.

Now We, the undersigned, being two of the Lords of Her Majesty's Treasury, do, with the concurrence of the Lord Chancellor, hereby give notice and order and direct:—

That from and after the first day of January, 1891, in lieu of any regulations on the subject heretofore in force, the stamps used for denoting the fees and percentages described in the schedule hereto subjoined shall, so far as they are payable in regard to proceedings in the High Court of Justice and Court of Appeal, be of the character and be applied and otherwise dealt with as prescribed by such schedule. And we do further enjoin that this order shall be binding on all courts, officers, and persons whom such regulations may in any way affect.

The adhesive stamps herein referred to shall be of the description overprinted with the word "Bankruptcy," except where otherwise provided. They shall be cancelled by the various Court or other officials by perforation or in such manner as the Commissioners of Inland Revenue may from time to time direct. The impressed stamps also shall be of such character as the said Commissioners may adopt for the purpose.

The official forms with impressed or adhesive stamps (as the case may be) required in respect of any proceedings herein referred to may be obtained at the Inland Revenue Offices, Royal Courts of Justice. Persons may, however, in addition have their own forms stamped at that office or at the corresponding office at Somerset House.

STAMPS.

The Schedule above referred to.

Proceeding.	Document to be stamped.	Character of Stamp to be used.
Every declaration by a debtor of inability to pay his debts	Declaration.	Impressed.
Every bankruptcy notice	Notice .	Impressed.
Every bankruptcy petition	Petition .	Impressed.
Every bond with sureties	Bond .	Impressed.
Every affidavit filed other than proof of debts.	Affidavit .	Impressed or adhesive.
Every subpœna or summons under section 27 of the Act of 1883.	Subpœna or summons .	Impressed.
For taking an affidavit or an affirmation, or attestation upon honour in lieu of an affidavit or a declaration.	Affidavit .	Impressed or adhesive.
Every proof of debt above £2	Proof .	Impressed or adhesive.
Every petition under section 125 of the Act of 1883.	Petition .	Impressed.
Every receiving order under section 103 of the Act of 1883.	Order .	Impressed.
Every application for an order of discharge.	Application.	Impressed.
And for each creditor to be notified .	Application.	Adhesive except where number exceeds 20.
Every application to the Court to approve a composition.	Application.	Impressed.
Every application to the Court to approve a scheme.	Application.	Impressed.
Every application for search	Application.	Impressed.
Every application to the Court . .	Application.	Impressed.
Every office copy	Office copy .	Impressed or adhesive.

Schedule—*continued.*

STAMPS.

Proceeding.	Document to be stamped.	Character of Stamp to be used.
Every record of trial	Record .	Impressed.
Every allocatur by the taxing officer of the Court for any costs, charges, or disbursements.	Allocatur .	Impressed or adhesive.

Dated the 19th day of December, 1890.

SIDNEY HERBERT.

DEEDS OF ARRANGEMENT ACT, 1887.

50 & 51 Vict. Chap. 57.

An Act to provide for the Registration of Deeds of Arrangement.
[16th September, 1887.]

SECTS. 1—5.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited for all purposes as the Deeds of Arrangement Act, 1887.

Extent of Act.

2. This Act shall not extend to Scotland.

Commencement of Act.

3. This Act shall, except as in this Act specially provided, come into operation on the first day of January, one thousand eight hundred and eighty-eight, which date is in this Act referred to as the commencement of this Act.

Application of Act.

4.—(1) This Act shall apply to every deed of arrangement, as defined in this section, made after the commencement of this Act.

(2) A deed of arrangement to which this Act applies shall include any of the following instruments, whether under seal or not, made by, for, or in respect of the affairs of a debtor for the benefit of his creditors generally (otherwise than in pursuance of the law for the time being in force relating to bankruptcy), that is to say:—

(*a*) An assignment of property;

(*b*) A deed of or agreement for a composition;

And in cases where creditors of a debtor obtain any control over his property or business:—

(*c*) A deed of inspectorship entered into for the purpose of carrying on or winding up a business;

(*d*) A letter of licence authorising the debtor or any other person to manage, carry on, realise, or dispose of a business, with a view to the payment of debts; and

(*e*) Any agreement or instrument entered into for the purpose of carrying on or winding up the debtor's business, or authorising the debtor or any other person to manage, carry on, realise, or dispose of the debtor's business, with a view to the payment of his debts.

Avoidance of unregistered deeds of arrangement.

5. From and after the commencement of this Act a deed of arrangement to which this Act applies shall be void unless the same shall have been registered under this Act within seven clear days after the first execution thereof by the debtor or any creditor, or if it is executed in any place out of England or Ireland respectively, then within seven clear days after the time at which it would, in the ordinary course of post, arrive in England or Ireland respectively, if posted within one week after the execution thereof, and unless the same shall bear such ordinary and *ad valorem* stamp as is under this Act provided.

6. The registration of a deed of arrangement under this Act shall be effected in the following manner:—

Mode of registration.

(1) A true copy of the deed, and of every schedule or inventory thereto annexed, or therein referred to, shall be presented to and filed with the registrar within seven clear days after the execution of the said deed (in like manner as a bill of sale given by way of security for the payment of money is now required to be filed), together with an affidavit verifying the time of execution, and containing a description of the residence and occupation of the debtor, and of the place or places where his business is carried on, and an affidavit by the debtor stating the total estimated amount of property and liabilities included under the deed, the total amount of the composition (if any) payable thereunder, and the names and addresses of his creditors:

(2) No deed shall be registered under this Act unless the original of such deed, duly stamped with the proper inland revenue duty, and in addition to such duty a stamp denoting a duty computed at the rate of one shilling for every hundred pounds or fraction of a hundred pounds of the sworn value of the property passing, or (where no property passes under the deed) the amount of composition payable under the deed, is produced to the registrar at the time of such registration.

Form of register.

7. The registrar shall keep a register wherein shall be entered, as soon as conveniently may be after the presentation of a deed for registration, an abstract of the contents of every deed of arrangement registered under this Act, containing the following and any other prescribed particulars:—

(*a*) The date of the deed:

(*b*) The name, address, and description of the debtor, and the place or places where his business is carried on, and the title of the firm or firms under which the debtor carries on business, and the name and address of the trustee (if any) under the deed:

(*c*) A short statement of the nature and effect of the deed, and of the composition in the pound payable thereunder:

(*d*) The date of registration:

(*e*) The amount of property and liabilities included under the deed, as estimated by the debtor.

Registrar and office for registration.

8.—(1) The registrar of bills of sales in England and Ireland respectively shall be the registrar for the purposes of this Act.

(2) In England the Bills of Sale Department of the Central Office of the Supreme Court of Judicature, and in Ireland the Bills of Sale Office of the Queen's Bench Division of the High Court of Justice, shall be the office for the registration of deeds of arrangement.

Rectification of register.

9. The Court or a Judge upon being satisfied that the omission to register a deed of arrangement within the time required by this Act or that the omission or mis-statement of the name, residence, or description of any person was accidental or due to inadvertence, or to some cause beyond the control of the debtor and not imputable to any negligence on his part, may on the application of any party interested, and on such terms and conditions as are just and expedient, extend the time for such registration, or order such omission or mis-statement to be supplied or rectified by the insertion in the register of the true name, residence, or description.

Time for registration.

10. When the time for registering a deed of arrangement expires on a Sunday, or other day on which the registration office is closed, the registration shall be valid if made on the next following day on which the office is open.

SECTS. 11—16.

Office copies.

11. Subject to the provisions of this Act, and to any rules made thereunder, any person shall be entitled to have an office copy of, or extract from, any deed registered under this Act upon paying for the same at the like rate as for office copies of judgments of the High Court of Justice, and any copy or extract purporting to be an office copy or extract shall, in all courts and before all arbitrators or other persons, be admitted as *primâ facie* evidence thereof, and of the fact and date of registration as shown thereon.

Inspection of register and registered deeds.

12.—(1) Any person shall be entitled, at all reasonable times, to search the register on payment of one shilling, or such other fee as may be prescribed, and subject to such regulations as may be prescribed, and shall be entitled, at all reasonable times, to inspect, examine, and make extracts from any registered deed of arrangement, without being required to make a written application or to specify any particulars in reference thereto, upon payment of one shilling, or such other fee as may be prescribed, for each deed of arrangement inspected.

(2) Provided that the said extracts shall be limited to the dates of execution and of registration, the names, addresses, and descriptions of the debtor and of the parties to the deed, a short statement of the nature and effect of the deed, and any other prescribed particulars.

Local registration of copy of deeds.

13.—(1) When the place of business or residence of the debtor who is one of the parties to a deed of arrangement, or who is referred to therein, is situate in some place outside the London Bankruptcy District, as defined by the Bankruptcy Act, 1883, the registrar shall within three clear days after registration, and in accordance with the prescribed directions, transmit a copy of such deed to the registrar of the county court in the district of which such place of business or residence is situate.

(2) Every copy so transmitted shall be filed, kept, and indexed by the registrar of the county court in the prescribed manner, and any person may search, inspect, make extracts from and obtain copies of, the registered copy, in the like manner and upon the like terms, as to payment or otherwise, as near as may be, as in the case of deeds registered under this Act.

(3) This section shall not apply to Ireland.

Affidavits.

14. Every affidavit required by or for the purposes of this Act may be sworn before a master of the Supreme Court of Judicature in England or Ireland, or before any person empowered to take affidavits in the Supreme Courts of Judicature of England or Ireland.

Fees.

15.—(1) There shall be taken, in respect of the registration of deeds of arrangement, and in respect of any office copies or extracts, or official searches made by the registrar, such fees as may be from time to time prescribed; and nothing in this Act contained shall make it obligatory on the registrar to do, or permit to be done, any act in respect of which any fee is specified or prescribed, except on payment of such fee.

38 & 39 Vict. c. 77, s. 26.

(2) The twenty-sixth section of the Supreme Court of Judicature Act, 1875, as regards England, and the eighty-fourth section of the Supreme Court of Judicature Act (Ireland), 1877, as regards Ireland, and any enactments for the time being in force amending or substituted for those sections respectively shall apply to fees under this Act, and orders under those sections may, if need be, be made in relation to such fees accordingly.

Amendment of 46 & 47 Vict. c. 52, s. 28.

16.—(1) The third sub-section, paragraph (*g*) of the twenty-eighth section of the Bankruptcy Act, 1883, which enacts amongst other things that one of the facts on proof of which the Court shall either refuse an order of discharge to a bankrupt, or suspend the operation of the order for a specified time, or grant the bankrupt an order of

discharge subject to the conditions mentioned in the section, is that the bankrupt has on any previous occasion made a statutory composition or arrangement with his creditors, shall be read and construed with the word "statutory" omitted therefrom.

(2) This section shall not apply to Ireland.

Saving as to Bankruptcy Acts.

17. Nothing contained in this Act shall be construed to repeal or shall affect any provision of the law for the time being in force in relation to bankruptcy, or shall give validity to any deed or instrument which by law is an act of bankruptcy, or void or voidable.

Rules.

18.—(1) Rules for carrying this Act into effect may be made, revoked, and altered from time to time by the like persons and in the like manner in which rules may be made under and for the purposes of the Supreme Court of Judicature Acts, 1873 to 1884, as regards England and the Supreme Court of Judicature Act (Ireland), 1877, as regards Ireland.

40 & 41 Vict. c. 57.

(2) Such rules as may be required for the purposes of this Act may be made at any time after the passing of this Act.

Interpretation of terms.

19. In this Act, unless the context otherwise requires,—

"Court or a Judge" means the High Court of Justice and any Judge thereof

"Creditors generally" includes all creditors who may assent or take the benefit of a deed of arrangement;

"Person" includes a body of persons corporate or unincorporate;

"Prescribed" means prescribed by rules to be made under this Act;

"Property" has the same meaning as the same expression has in the Bankruptcy Act, 1883;

"Rules" includes forms.

Note.—As to Irish deeds of arrangement, see further 53 & 54 Vict. c. 24. A deed executed by a foreign debtor, in the country of his domicil, need not be registered here, though he carries on business here by an agent: *Dulaney* v. *Merry* (1901), 1 K. B. 536.

Whether a deed is one for the benefit of the creditors generally, and so void if not registered, sometimes requires careful consideration: see and cf. *In re Hobbins*, 6 Man. 212; *Hedges* v. *Preston*, 80 L. T. 847.

RULES UNDER THE DEEDS OF ARRANGEMENT ACT, 1887.

RULES 1—7.

Short title and commencement.

1. These Rules may be cited as "The Deeds of Arrangement Act Rules, 1888." They shall come into operation on the first day of January, one thousand eight hundred and eighty-eight.

Interpretation of terms.

2. In these Rules, unless the context or subject-matter otherwise requires,—

(1) "The Act" means the Deeds of Arrangement Act, 1887.

"County Court Registrar" means any registrar of a County Court to whom a copy of a registered deed is transmitted, pursuant to the thirteenth section of the Act.

"Debtor" means any person by, for, or in respect of whose affairs a deed of arrangement, as defined by the Act, shall be made or entered into, and includes a firm of persons in co-partnership.

"Deed" means any deed of arrangement as defined by the Act.

"Registrar" means the registrar for the purposes of the Act.

(2) Words importing the singular number include the plural number, and words importing the plural number include the singular number, and words importing the masculine gender include the feminine.

(3) Any terms and expressions defined by the Act shall in these Rules have the meanings assigned to them by the Act.

Registration of Deeds.

Affidavits.

3. The affidavits to be filed pursuant to the sixth section of the Act shall be respectively in the Forms Nos. 1, 2, and 3, in the Appendix, with such variations as circumstances may require.

Abstract.

4. The abstract of the contents of any deed to be entered on the register shall be in the Form No. 4 in the Appendix.

Indorsement on copy of deed for filing.

5. Upon every copy of a deed which is presented for filing there shall be indorsed, by the person who presents it, the name of the debtor, the date of the deed and of the filing thereof, the total amount of duty with which the deed is stamped, and a certificate signed by the solicitor of the debtor or the person who presents the copy for filing certifying that the copy is a correct copy of the deed, and stating the number of folios (of 72 words each) which the deed contains.

Certificate of registration on original deed.

6. When a deed is registered under the Act there shall be written on the original deed a certificate stating that the deed has been duly registered as prescribed by the Act, and the date of registration. Such certificate shall be sealed with the seal of the central office.

Transmission of Copies to County Courts.

Indorsement to be made on copies transmitted to County Court Registrars.

7. Upon every copy of a deed which pursuant to the Act is transmitted to a County Court Registrar there shall be written copies of every indorsement or certificate written on the original deed or on the

filed copy thereof. Such copies shall be signed by the proper officer of the central office.

8. The copy of a deed which pursuant to the Act is required to be transmitted to a County Court Registrar may be transmitted to him by post. Transmission of copy by post.

9. The County Court Registrar shall number the copies of deeds received by him in the order in which they shall respectively be received, and shall file and keep them in his office. Copies to be numbered and filed in County Court office..

10. The County Court Registrar shall keep an index, alphabetically arranged, in which he shall enter, under the first letter of the surname of the debtor, such surname, with his christian name, address, and description, and the number which has been affixed to the copy. Index to be kept in County Court office.

Searches and Extracts.

11. Extracts from the filed copy of a deed shall be limited to the date of execution and registration, the names, addresses, and descriptions of the debtor and the parties to the deed, and a short statement of the nature and effect of the deed. Extracts from filed copy of deed.

12. The County Court Registrar shall allow any person to search the index kept by him at any time during which he is required by the County Court Rules for the time being to keep his office open, and to make the same extracts as are permitted by the last preceding Rule upon payment by such person of the same fee as is payable in the central office. The County Court Registrar shall also, if required, cause an office copy to be made of any copy of a deed filed in his office, and shall be entitled for making, marking, and sealing the same to the same fee as is payable for an office copy of a deed in the central office. Search and inspection in County Court.

The 17th day of December, 1887.

THE DEEDS OF ARRANGEMENT ACT RULES, 1888.

RULE.

In Form No. 3, in the Appendix to the Deeds of Arrangement Act Rules, 1888, the following paragraph shall be substituted for paragraph 5:—

"The names of my creditors, with their addresses and the amount of debt due to or claimed by each of such creditors, are contained in and shown by the Schedule (signed by me) to this my affidavit."

SCHEDULE.

Names of Creditors.	Addresses.	Amount of Debt due to or claimed by each creditor after Deduction of Value of Securities held by the Creditor.

This Rule shall come into operation on the first day of June, one thousand eight hundred and eighty-eight.

April 21, 1888.

Note.—The forms referred to in these Rules can be obtained, if required, at any law stationer's.

THE BANKRUPTCY ACTS, 1883 AND 1890.

DEEDS OF ARRANGEMENT.

Rules under **Section** 25 of the **Bankruptcy Act**, 1890.

26th of November, 1890.

RULES 1—5.

1. These Rules shall come into operation on the first day of January, 1891. They may be cited as the Deeds of Arrangement Rules, 1890. Short title and commencement.

2. In these Rules, unless the context or subject-matter otherwise requires, terms and expressions shall have the same meanings as the same terms and expressions have in the Deeds of Arrangement Act, 1887, and the Rules made thereunder, and section 25 of the Bankruptcy Act, 1890. Interpretation.

Returns of Registered Deeds.

3. The returns of the registration of Deeds of Arrangement to be made to the Board of Trade by the registrar shall be made once every week commencing with the 8th of January, 1891, and each return shall comprise all the Deeds of Arrangement which have been registered during the week immediately preceding the day on which the return is made. Returns of registered deeds.

4. Each return shall be signed by the proper officer of the Central Office of the Supreme Court, and shall be transmitted by him to the Board of Trade, addressed— Transmission of return.

Bankruptcy Acts,
The Inspector-General in Bankruptcy,
Board of Trade,
Whitehall, S.W.

5. Each weekly return shall contain the following particulars relating to each deed of arrangement comprised in the return:— Contents of return.

(1) The date of the deed.
(2) The date of registration.
(3) The full name and address of the debtor.
(4) The description of the trade or business of the debtor.
(5) The place or places where the debtor carries on business, and the title of the firm (if any) under which the business is carried on.
(6) The full name and address of each trustee (if any) under the deed.
(7) The nature and effect of the deed, and where a composition is provided for, the amount of composition in the £, payable thereunder.
(8) The gross amount and net amount of liabilities as shown on the register.
(9) The gross value and net value of the property as shown on the register.

RULES 5—16.

(10) Such further particulars as the Board of Trade may by letter addressed to the registrar require.

Form of return.

6. The return shall be made in the Form No. 1 in the Appendix, with such variations as circumstances may require.

ACCOUNTS OF RECEIPTS AND PAYMENTS.

Transmission of accounts.

7. The account of receipts and payments to be transmitted to the Board of Trade by every trustee under any deed of arrangement as defined by section 4 of the Deeds of Arrangement Act, 1887, shall be in the Form No. 2 in the Appendix, with such variations as circumstances may require, and shall be on sheets 13 inches by 16 inches, and shall be verified by an affidavit in the Form No. 3 in the Appendix, and shall be transmitted to "The Inspector-General in Bankruptcy, Board of Trade, Whitehall."

Receipts and payments.

8. In the account each receipt and payment must be entered in such a manner as sufficiently to explain its nature.

Trading account.

9. When the trustee carries on a business, a trading account must be forwarded as a distinct account, and the totals of receipts and payments on the trading account must alone be set out in the yearly account. The trading account shall be in the Form No. 4 in the Appendix, and shall be on sheets 13 inches by 16 inches.

Petty expenses.

10. Petty expenses must be entered in the accounts in sufficient detail to show that no estimated charges are made.

Realisations.

11. Where property has been realised the gross proceeds of sale must be entered under receipts in the account, and the necessary disbursements and charges incidental to sales must be entered as payments.

Dividends.

12. Where dividends or instalments of composition are distributed under the deed, the total amount of each dividend or instalment of composition must be entered in the trustee's account as one sum, and the trustee shall forward with his final account under the deed a statement in the Form No. 5 in the Appendix, showing the amount of the claim and the amount of dividend or composition payable to each creditor, distinguishing in such list the dividends or instalments of composition paid and those remaining unclaimed. Such lists shall be on sheets 13 inches by 8 inches.

Partnership accounts.

13. Where the deed has been made by a firm of debtors in partnership, distinct accounts shall be transmitted of the joint estate and of each of the separate estates.

Imperfect accounts.

14. Where it appears to the Board of Trade that the account transmitted by a trustee under a deed of arrangement is incomplete, or requires amendment or explanation, the Board of Trade may require such account to be completed or amended, or require the trustee to furnish explanations with reference to any of the entries appearing therein; and any such requirement by the Board of Trade may be enforced in the same manner as the transmission of accounts under section 25 of the Bankruptcy Act, 1890.

Affidavit of no receipts or payments.

15. Where a trustee has not since the date of his becoming trustee, or since the last time that his accounts have been transmitted, as the case may be, received or paid any money on account of the debtor's estate, he shall, at the period when he is required to transmit his accounts to the Board of Trade, forward to the Board of Trade an affidavit of no receipts or payments.

Affidavit verifying final account.

16. When a trustee has realised all the property included in the deed of arrangement, or so much thereof as can probably be realised, and has distributed a final dividend, or final instalment of composition, or in any other case where the trusts of the deed or obligations of the trustee have been completely fulfilled, the trustee shall transmit with

his yearly account an affidavit in the Form No. 6 in the Appendix, and no further accounts need thereafter be transmitted by him.

RULES 16—18.

Summary of accounts or modified forms of account in particular cases.

17. In any particular case in which it shall appear to the Board of Trade that an account of receipts and payments in the form and containing the particulars specified in the Deeds of Arrangement Rules, 1890, may for special reasons be dispensed with, the Board of Trade may permit the trustee to transmit, instead of accounts in the form therein specified, such a summary of his accounts or modified statement of accounts as to the Board of Trade shall appear sufficient.

Exemption from transmission of accounts when trusts fulfilled prior to Jan. 1, 1891.

18. Where a trustee under a deed of arrangement satisfies the Board of Trade by an affidavit or otherwise that the trusts of the deed, or the obligations of the trustee thereunder, were completely fulfilled or discharged prior to the 1st day of January, 1891, the accounts prescribed by the Deeds of Arrangement Rules, 1890, and these Rules, need not be transmitted.

Note.—Rules 17 and 18, which were made in May, 1891, came into force on the 4th of June, 1891. The Forms contained in the Appendix to these Rules are omitted; they can be obtained, if required, at any law stationer's.

See further as to Rules under the Deeds of Arrangement Act, 1887, *ante*, p. 304.

DEEDS OF ARRANGEMENT ACT, 1887.

ORDER AS TO FEES.

I.

FEES.

Fees.

The fees contained in the schedule hereto are fixed and appointed to be, and shall be taken in the office for the registration of deeds of arrangement pursuant to the Deeds of Arrangement Act, 1887. The said fees shall, until otherwise determined by the Treasury, be taken by stamps.

II.

Payment of fees.

All fees payable under this Order, except fees in respect of searches, inspections, and office copies, shall be paid at the time of registration.

III.

Commencement and short title.

This Order shall come into operation on the first day of January, one thousand eight hundred and eighty-eight, and may be cited as "The Order as to Fees for Registration of Deeds of Arrangement"; and expressions therein shall have the same meaning as in the Deeds of Arrangement Act Rules, 1888.

SCHEDULE.

Scale of Fees.

Filing.

1. Where the total estimated amount of property included under or the total amount of composition payable under a deed shall appear from the affidavit of the debtor not to exceed the following amounts, the fee on filing such deed shall be as under:—

	£	s.	d.
Where the property does not exceed 1,000*l.*	1	0	0
Exceeds 1,000*l.* but ,, ,, 2,000*l.*	2	0	0
,, 2,000*l.* ,, ,, ,, 3,000*l.*	3	0	0
,, 3,000*l.* ,, ,, ,, 4,000*l.*	4	0	0
Exceeds 4,000*l.*	5	0	0
In every case to which the above fees do not apply	2	0	0
2. On every certificate, indorsed on an original deed, of the registration thereof	0	2	6
3. On every copy of a deed transmitted to a county court registrar, for every folio or part of a folio contained in such copy	0	0	1½

But if the total amount shall involve a fraction of a penny, then such fraction shall be charged as 1*d.*

FEES.

Searches.

	£	s.	d.
4. On searching the register (for every name inspected) and on inspecting the filed copy, including the limited extract to be taken pursuant to the Act and Rules . . .	0	2	6

Copies.

5. On office copies and extracts of or from the filed copy of a deed, for every folio (72 words) or fractional part of a folio	0	0	6
6. On examining a copy brought in to be marked as an office copy, for every folio or fractional part of a folio	0	0	2

Miscellaneous.

7. On all other documents and proceedings (including filing affidavits) the same fees as are payable in respect of the like documents and proceedings under the Order as to Supreme Court Fees, 1884.

The 17th day of December, 1887.

THE BENEFICES ACT, 1898.

61 & 62 Vict. Chap. 48.

See *ante*, p. 75.

SECT. 10.

In certain cases of sequestration benefice to become void.

S. 10. In the case of incumbents presented or collated after the commencement of this Act (*a*), if, on bankruptcy, or in aid of any writ of execution against property, the benefice of any such incumbent is sequestrated within twelve months after his institution, or if such sequestration, if issued after that period, continues for the space of one whole year, or if any such incumbent incurs two such sequestrations in the space of two years, the benefice shall, unless the bishop in the manner and within the time to be prescribed otherwise direct, become void, and section fifty-eight of the Pluralities Act, 1838, shall apply in like manner as if the benefice had become void under that section.

(*a*) *I.e.*, January 1, 1899.

BILLS OF SALE ACT, 1878.

41 & 42 Vict. Chap. 31.

An Act to consolidate and amend the Law for preventing Frauds upon Creditors by secret Bills of Sale of Personal Chattels.

[22nd July, 1878.]

SECTS. 1—4.

Whereas it is expedient to consolidate and amend the law relating to bills of sale of personal chattels:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited for all purposes as the Bills of Sale Act, 1878.

Commencement.

2. This Act shall come into operation on the first day of January, one thousand eight hundred and seventy-nine, which day is in this Act referred to as the commencement of this Act.

Application of Act.

3. This Act shall apply to every bill of sale executed on or after the first day of January, one thousand eight hundred and seventy-nine (whether the same be absolute, or subject or not subject to any trust), whereby the holder or grantee has power either with or without notice, and either immediately or at any future time, to seize or take possession of any personal chattels comprised in or made subject to such bill of sale.

Interpretation of terms.

4. In this Act the following words and expressions shall have the meanings in this section assigned to them respectively, unless there be something in the subject or context repugnant to such construction; (that is to say),

See now s. 3 of the Act of 1882.

The expression "bill of sale" shall include bills of sale, assignments, transfers, declarations of trust without transfer, inventories of goods with receipt thereto attached, or receipts for purchase-moneys of goods, and other assurances of personal chattels, and also powers of attorney, authorities, or licences to take possession of personal chattels as security for any debt; and also any agreement, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels, or to any charge or security thereon, shall be conferred, but shall not include the following documents; that is to say, assignments for the benefit of the creditors of the person making or giving the same, marriage settlements, transfers or assignments of any ship or vessel or any share thereof, transfers of goods in the ordinary course of business of any trade or calling, bills of sale of goods in foreign parts or at sea, bills of lading, India warrants, warehouse keepers' certificates, warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either

by endorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented:

The expression "personal chattels" shall mean goods, furniture, and other articles capable of complete transfer by delivery, and (when separately assigned or charged) fixtures and growing crops, but shall not include chattel interests in real estate, nor fixtures (except trade machinery as hereinafter defined), when assigned together with a freehold or leasehold interest in any land or building to which they are affixed, nor growing crops when assigned together with any interest in the land on which they grow, nor shares or interest in the stock, funds, or securities of any government, or in the capital or property of incorporated or joint-stock companies, nor choses in action, nor any stock or produce upon any farm or lands which by virtue of any covenant or agreement or of the custom of the country ought not to be removed from any farm where the same are at the time of making or giving such bill of sale:

Personal chattels shall be deemed to be in the "apparent possession" of the person making or giving a bill of sale, so long as they remain or are in or upon any house, mill, warehouse, building, works, yard, land, or other premises occupied by him, or are used and enjoyed by him in any place whatsoever, notwithstanding that formal possession thereof may have been taken by or given to any other person:

"Prescribed" means prescribed by rules under the provisions of this Act.

Application of Act to trade machinery.

5. From and after the commencement of this Act trade machinery shall, for the purposes of this Act, be deemed to be personal chattels, and any mode of disposition of trade machinery by the owner thereof, which would be a bill of sale as to any other personal chattels, shall be deemed to be a bill of sale within the meaning of this Act.

For the purposes of this Act—

"Trade machinery" means the machinery used in or attached to any factory or workshop;

1st. Exclusive of the fixed motive powers, such as the water-wheels and steam-engines, and the steam-boilers, donkey-engines, and other fixed appurtenances of the said motive powers; and

2nd. Exclusive of the fixed power machinery, such as the shafts, wheels, drums, and their fixed appurtenances, which transmit the action of the motive powers to the other machinery, fixed and loose; and

3rd. Exclusive of the pipes for steam, gas, and water in the factory or workshop.

The machinery or effects excluded by this section from the definition of trade machinery shall not be deemed to be personal chattels within the meaning of this Act.

"Factory or workshop" means any premises on which any manual labour is exercised by way of trade, or for purposes of gain, in or incidental to the following purposes or any of them; that is to say,

(*a*) In or incidental to the making any article or part of an article; or

(*b*) In or incidental to the altering, repairing, ornamenting, finishing, of any article; or

(*c*) In or incidental to the adapting for sale any article.

Certain instruments giving

6. Every attornment, instrument, or agreement, not being a mining lease, whereby a power of distress is given or agreed to be given by

SECTS. 6—9.

any person to any other person by way of security for any present, future, or contingent debt or advance, and whereby any rent is reserved or made payable as a mode of providing for the payment of interest on such debt or advance, or otherwise for the purpose of such security only, shall be deemed to be a bill of sale, within the meaning of this Act, of any personal chattels which may be seized or taken under such power of distress.

powers of distress to be subject to this Act.

Provided, that nothing in this section shall extend to any mortgage of any estate or interest in any land, tenement, or hereditament which the mortgagee, being in possession, shall have demised to the mortgagor as his tenant at a fair and reasonable rent.

Fixtures or growing crops not to be deemed separately assigned when the land passes by the same instrument.

7. No fixtures or growing crops shall be deemed under this Act to be separately assigned or charged by reason only that they are assigned by separate words, or that power is given to sever them from the land or building to which they are affixed, or from the land on which they grow, without otherwise taking possession of or dealing with such land or building, or land, if by the same instrument any freehold or leasehold interest in the land or building to which such fixtures are affixed, or in the land on which such crops grow, is also conveyed or assigned to the same persons or person.

The same rule of construction shall be applied to all deeds or instruments, including fixtures or growing crops, executed before the commencement of this Act and then subsisting and in force, in all questions arising under any bankruptcy, liquidation, assignment for the benefit of creditors, or execution of any process of any Court, which shall take place or be issued after the commencement of this Act.

Avoidance of unregistered bill of sale in certain cases.

See now ss. 8 and 15 of Act of 1882.

8. *Every bill of sale to which this Act applies shall be duly attested and shall be registered under this Act, within seven days after the making or giving thereof, and shall set forth the consideration for which such bill of sale was given, otherwise such bill of sale, as against all trustees or assignees of the estate of the person whose chattels, or any of them, are comprised in such bill of sale under the law relating to bankruptcy or liquidation, or under any assignment for the benefit of the creditors of such person, and also as against all sheriff's officers and other persons seizing any chattels comprised in such bill of sale, in the execution of any process of any Court authorising the seizure of the chattels of the person by whom or of whose chattels such bill has been made, and also as against every person on whose behalf such process shall have been issued, shall be deemed fraudulent and void so far as regards the property in or right to the possession of any chattels comprised in such bill of sale which, at or after the time of filing the petition for bankruptcy or liquidation, or of the execution of such assignment, or of executing such process (as the case may be), and after the expiration of such seven days, are in the possession or apparent possession of the person making such bill of sale (or of any person against whom the process has issued under or in the execution of which such bill has been made or given, as the case may be).*

Avoidance of certain duplicate bills of sale.

9. Where a subsequent bill of sale is executed within or on the expiration of seven days after the execution of a prior unregistered bill of sale, and comprises all or any part of the personal chattels comprised in such prior bill of sale, then, if such subsequent bill of sale is given as security for the same debt as is secured by the prior bill of sale, or for any part of such debt, it shall, to the extent to which it is a security for the same debt or part thereof, and so far as respects the personal chattels or part thereof comprised in the prior bill, be absolutely void, unless it is proved to the satisfaction of the Court having cognizance of the case that the subsequent bill of sale was *bonâ fide* given for the purpose of correcting some material error in the prior bill of sale, and not for the purpose of evading this Act.

10. A bill of sale shall be attested and registered under this Act in the following manner:

Mode of registering bills of sale.

(1) *The execution of every bill of sale shall be attested by a solicitor of the Supreme Court, and the attestation shall state that before the execution of the bill of sale the effect thereof has been explained to the grantor by the attesting solicitor:*

See now s. 10 of the Act of 1882.

(2) Such bill, with every schedule or inventory thereto annexed or therein referred to, and also a true copy of such bill and of every such schedule or inventory, and of every attestation of the execution of such bill of sale, together with an affidavit of the time of such bill of sale being made or given, and of its due execution and attestation, and a description of the residence and occupation of the person making or giving the same (or in case the same is made or given by any person under or in the execution of any process, then a description of the residence and occupation of the person against whom such process issued), and of every attesting witness to such bill of sale, shall be presented to, and the said copy and affidavit shall be filed with the registrar within seven clear days after the making or giving of such bill of sale, in like manner as a warrant of attorney in any personal action given by a trader is now by law required to be filed.

(3) If the bill of sale is made or given subject to any defeasance or condition, or declaration of trust not contained in the body thereof, such defeasance, condition, or declaration, shall be deemed to be part of the bill, and shall be written on the same paper or parchment therewith before the registration, and shall be truly set forth in the copy filed under this Act therewith and as part thereof, otherwise the registration shall be void.

In case two or more bills of sale are given, comprising in whole or in part any of the same chattels, they shall have priority in the order of the date of their registration respectively as regards such chattels.

A transfer or assignment of a registered bill of sale need not be registered.

Renewal of registration.

11. The registration of a bill of sale, whether executed before or after the commencement of this Act, must be renewed once at least every five years, and if a period of five years elapses from the registration or renewed registration of a bill of sale without a renewal or further renewal (as the case may be), the registration shall become void.

The renewal of a registration shall be effected by filing with the registrar an affidavit stating the date of the bill of sale and of the last registration thereof, and the names, residences, and occupations of the parties thereto as stated therein, and that the bill of sale is still a subsisting security.

Every such affidavit may be in the form set forth in the schedule (A) to this Act annexed.

A renewal of registration shall not become necessary by reason only of a transfer or assignment of a bill of sale.

Form of register.

12. The registrar shall keep a book (in this Act called "the register") for the purposes of this Act, and shall, upon the filing of any bill of sale or copy under this Act, enter therein in the form set forth in the second schedule (B) to this Act annexed, or in any other prescribed form, the name, residence, and occupation, of the person by whom the bill was made or given (or in case the same was made or given by any other person under or in the execution of process, then the name, residence, and occupation of the person against whom such process was

See further s. 11 of the Act of 1882.

SECTS. 12—17.

issued, and also the name of the person or persons to whom or in whose favour the bill was given), and the other particulars shown in the said schedule or to be prescribed under this Act, and shall number all such bills registered in each year consecutively, according to the respective dates of their registration.

Upon the registration of any affidavit of renewal the like entry shall be made, with the addition of the date and number of the last previous entry relating to the same bill, and the bill of sale or copy originally filed shall be thereupon marked with the number affixed to such affidavit of renewal.

The registrar shall also keep an index of the names of the grantors of registered bills of sale with reference to entries in the register of the bills of sale given by each such grantor.

Such index shall be arranged in divisions corresponding with the letters of the alphabet, so that all grantors whose surnames begin with the same letter (and no others) shall be comprised in one division, but the arrangement within each such division need not be strictly alphabetical.

The registrar.

13. The masters of the Supreme Court of Judicature attached to the Queen's Bench Division of the High Court of Justice, or such other officers as may for the time being be assigned for this purpose under the provisions of the Supreme Court of Judicature Acts, 1873 and 1875, shall be the registrar for the purposes of this Act, and any one of the said masters may perform all or any of the duties of the registrar.

36 & 37 Vict. c. 66, 38 & 39 Vict. c. 77.

Rectification of register.

14. Any Judge of the High Court of Justice, on being satisfied that the omission to register a bill of sale or an affidavit of renewal thereof within the time prescribed by this Act, or the omission or mis-statement of the name, residence, or occupation of any person, was accidental or due to inadvertence, may in his discretion order such omission or mis-statement to be rectified by the insertion in the register of the true name, residence, or occupation, or by extending the time for such registration on such terms and conditions (if any) as to security, notice by advertisement or otherwise, or as to any other matter, as he thinks fit to direct.

Entry of satisfaction.

15. Subject to and in accordance with any rules to be made under and for the purposes of this Act, the registrar may order a memorandum of satisfaction to be written upon any registered copy of a bill of sale, upon the prescribed evidence being given that the debt (if any) for which such bill of sale was made or given has been satisfied or discharged.

Copies may be taken, &c.

16. Any person shall be entitled to have an office copy or extract of any registered bill of sale, and affidavit of execution filed therewith, or copy thereof, and of any affidavit filed therewith, if any, or registered affidavit of renewal, upon paying for the same at the like rate as for office copies of judgments of the High Court of Justice, and any copy of a registered bill of sale, and affidavit purporting to be an office copy thereof, shall in all Courts and before all arbitrators or other persons, be admitted as *primâ facie* evidence thereof, and of the fact and date of registration as shown thereon. *Any person shall be entitled at all reasonable times to search the register and every registered bill of sale, upon payment of one shilling for every copy of a bill of sale inspected; such payment shall be made by a judicature stamp.*

See now s. 16 of the Act of 1882.

Affidavits.

17. Every affidavit required by or for the purposes of this Act may be sworn before a master of any division of the High Court of Justice, or before any commissioner empowered to take affidavits in the Supreme Court of Judicature.

Whoever wilfully makes or uses any false affidavit for the purposes of this Act shall be deemed guilty of wilful and corrupt perjury.

18. There shall be paid and received in common law stamps the following fees, viz.: Fees.

On filing a bill of sale . . . . . 2*s*.
On filing the affidavit of execution of a bill of sale . . 2*s*.
On the affidavit used for the purpose of registering a bill of sale (to include the fee for filing). . . . . 5*s*.

19. Section 26 of the Supreme Court of Judicature Act, 1875, and any enactments for the time being in force amending or substituted for that section shall apply to fees under this Act, and an order under that section may, if need be, be made in relation to such fees accordingly. Collection of fees under 38 & 39 Vict. c. 77, s. 26.

20. *Chattels comprised in a bill of sale which has been and continues to be duly registered under this Act shall not be deemed to be in the possession, order, or disposition of the grantor of the bill of sale within the meaning of the Bankruptcy Act* (see now s. 15 of the Act of 1882). Order and disposition. 32 & 33 Vict. c. 71.

21. Rules for the purpose of this Act may be made and altered from time to time by the like persons and in the like manner in which rules and regulations may be made under and for the purposes of the Supreme Court of Judicature Acts, 1873 and 1875. Rules. 36 & 37 Vict. c. 66.

22. When the time for registering a bill of sale expires on a Sunday, or other day on which the registrar's office is closed, the registration shall be valid if made on the next following day on which the office is open. 38 & 39 Vict. c. 77. Time for registration.

23. From and after the commencement of this Act, the Bills of Sale Act, 1854, and the Bills of Sale Act, 1866, shall be repealed; provided that (except as is herein expressly mentioned with respect to construction and with respect to renewal of registration) nothing in this Act shall affect any bill of sale executed before the commencement of this Act, and as regards bills of sale so executed the Acts hereby repealed shall continue in force. Repeal of Acts. 17 & 18 Vict. c. 36. 29 & 30 Vict. c. 96.

Any renewal after the commencement of this Act of the registration of a bill of sale executed after the commencement of this Act, and registered under the Acts hereby repealed, shall be made under this Act in the same manner as the renewal of a registration made under this Act.

24. This Act shall not extend to Scotland or to Ireland. Extent of Act.

SCHEDULES.

SCHEDULE A.

I [*A. B.* of] do swear that a bill of sale, bearing date the day of 18 [*insert the date of the bill*], and made between [*insert the names and descriptions of the parties in the original bill of sale*], and which said bill of sale [*or*, and a copy of which said bill of sale, *as the case may be*] was registered on the day of 18 [*insert date of registration*], is still a subsisting security. Sworn, &c. Sect. 11.

Sect. 12.

SCHEDULE B.

Satisfaction entered.	No.	By whom given (or against whom process issued).			To whom given.	Nature of instrument.	Date.	Date of registration.	Date of registration of affidavit of renewal.
		Name.	Residence.	Occupation.					

BILLS OF SALE ACT (1878) AMENDMENT ACT, 1882.

45 & 46 Vict. Chap. 43.

An Act to amend the Bills of Sale Act, 1878.

[18th August, 1882.]

SECTS. 1—6.

WHEREAS it is expedient to amend the Bills of Sale Act, 1878:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

41 & 42 Vict. c. 31.

Short title.

1. This Act may be cited for all purposes as the Bills of Sale Act (1878) Amendment Act, 1882; and this Act and the Bills of Sale Act, 1878, may be cited together as the Bills of Sale Acts, 1878 and 1882.

Commencement of Act.

2. This Act shall come into operation on the first day of November, one thousand eight hundred and eighty-two, which date is hereinafter referred to as the commencement of this Act.

Construction of Act.

41 & 42 Vict. c. 31.

3. The Bills of Sale Act, 1878, is hereinafter referred to as "the principal Act," and this Act shall, so far as is consistent with the tenor thereof, be construed as one with the principal Act; but unless the context otherwise requires, shall not apply to any bill of sale duly registered before the commencement of this Act so long as the registration thereof is not avoided by non-renewal or otherwise.

The expression "bill of sale" and other expressions in this Act, have the same meaning as in the principal Act, except as to bills of sale, or other documents mentioned in section 4 of the principal Act, which may be given otherwise than by way of security for the payment of money, to which last-mentioned bills of sale and other documents this Act shall not apply.

Bill of sale to have schedule of property attached thereto.

4. Every bill of sale shall have annexed thereto or written thereon a schedule containing an inventory of the personal chattels comprised in the bill of sale; and such bill of sale, save as hereinafter mentioned, shall have effect only in respect of the personal chattels specifically described in the said schedule; and shall be void, except as against the grantor, in respect of any personal chattels not so specifically described.

Bill of sale not to affect after-acquired property.

5. Save as hereinafter mentioned, a bill of sale shall be void, except as against the grantor, in respect of any personal chattels specifically described in the schedule thereto of which the grantor was not the true owner at the time of the execution of the bill of sale.

Exception as to certain things.

6. Nothing contained in the foregoing sections of this Act shall render a bill of sale void in respect of any of the following things: (that is to say),

(1) Any growing crops separately assigned or charged where such crops were actually growing at the time when the bill of sale was executed.

(2) Any fixtures separately assigned or charged, and any plant, or trade machinery where such fixtures, plant, or trade

SECTS. 6—11.

machinery are used in, attached to, or brought upon any land, farm, factory, workshop, shop, house, warehouse, or other place in substitution for any of the like fixtures, plant, or trade machinery specifically described in the schedule to such bill of sale.

Bill of sale with power to seize except in certain events to be void.

7. Personal chattels assigned under a bill of sale shall not be liable to be seized or taken possession of by the grantee for any other than the following causes:

(1) If the grantor shall make default in payment of the sum or sums of money thereby secured at the time therein provided for payment, or in the performance of any covenant or agreement contained in the bill of sale and necessary for maintaining the security;

(2) If the grantor shall become a bankrupt, or suffer the said goods or any of them to be distrained for rent, rates, or taxes;

(3) If the grantor shall fraudulently either remove or suffer the said goods, or any of them, to be removed from the premises;

(4) If the grantor shall not, without reasonable excuse, upon demand in writing by the grantee, produce to him his last receipts for rents, rates, and taxes;

(5) If execution shall have been levied against the goods of the grantor under any judgment at law;

Provided that the grantor may within five days, from the seizure or taking possession of any chattels on account of any of the above mentioned causes, apply to the High Court, or to a Judge thereof in chambers, and such Court or Judge, if satisfied that by payment of money or otherwise the said cause of seizure no longer exists, may restrain the grantee from removing or selling the said chattels, or may make such other order as may seem just.

Bill of sale to be void unless attested and registered.

8. Every bill of sale shall be duly attested, and shall be registered under the principal Act within seven clear days after the execution thereof, or if it is executed in any place out of England then within seven clear days after the time at which it would in the ordinary course of post arrive in England if posted immediately after the execution thereof; and shall truly set forth the consideration for which it was given; otherwise such bill of sale shall be void in respect of the personal chattels comprised therein.

Form of bill of sale.

9. A bill of sale made or given by way of security for the payment of money by the grantor thereof shall be void unless made in accordance with the form in the schedule to this Act annexed.

Attestation.

10. The execution of every bill of sale by the grantor shall be attested by one or more credible witness or witnesses, not being a party or parties thereto. So much of section 10 of the principal Act as requires that the execution of every bill of sale shall be attested by a solicitor of the Supreme Court, and that the attestation shall state that before the execution of the bill of sale the effect thereof has been explained to the grantor by the attesting witness, is hereby repealed.

Local registration of contents of bills of sale.

32 & 33 Vict. c. 71, s. 60.

See *ante*, p. 5.

11. Where the affidavit (which under section 10 of the principal Act is required to accompany a bill of sale when presented for registration) describes the residence of the person making or giving the same or of the person against whom the process is issued to be in some place outside the London bankruptcy district as defined by the Bankruptcy Act, 1869, or where the bill of sale describes the chattels enumerated therein as being in some place outside the said London bankruptcy district, the registrar under the principal Act shall forthwith and within three clear days after registration in the principal registry, and in accordance with the prescribed directions, transmit an abstract in the prescribed form of the contents of such bill of sale to

the county court registrar in whose district such places are situate, and if such places are in the districts of different registrars, to each such registrar.

Every abstract so transmitted shall be filed, kept, and indexed by the registrar of the county court in the prescribed manner, and any person may search, inspect, make extracts from, and obtain copies of the abstract so registered in the like manner and upon the like terms as to payment or otherwise as near as may be as in the case of bills of sale registered by the registrar under the principal Act.

Bill of sale under £30 to be void.

12. Every bill of sale made or given in consideration of any sum under thirty pounds shall be void.

Chattels not to be removed or sold.

13. All personal chattels seized, or of which possession is taken after the commencement of this Act, under or by virtue of any bill of sale (whether registered before or after the commencement of this Act), shall remain on the premises where they were so seized or so taken possession of, and shall not be removed or sold until after the expiration of five clear days from the day they were so seized or so taken possession of.

Bill of sale not to protect chattels against poor and parochial rates.

14. A bill of sale to which this Act applies shall be no protection in respect of personal chattels included in such bill of sale which but for such bill of sale would have been liable to distress under a warrant for the recovery of taxes and poor and other parochial rates.

Repeal of part of Bills of Sale Act, 1878.

15. The eighth and twentieth sections of the principal Act, and also all other enactments contained in the principal Act which are inconsistent with this Act, are repealed, but this repeal shall not affect the validity of anything done or suffered under the principal Act before the commencement of this Act.

Inspection of registered bills of sale.

16. So much of the sixteenth section of the principal Act as enacts that any person shall be entitled at all reasonable times to search the register and every registered bill of sale upon payment of one shilling for every copy of a bill of sale inspected is hereby repealed, and from and after the commencement of this Act any person shall be entitled at all reasonable times to search the register, on payment of a fee of one shilling, or such other fee as may be prescribed, and subject to such regulation as may be prescribed, and shall be entitled at all reasonable times to inspect, examine, and make extracts from any and every registered bill of sale without being required to make a written application, or to specify any particulars in reference thereto, upon payment of one shilling for each bill of sale inspected, and such payment shall be made by a judicature stamp: Provided that the said extracts shall be limited to the dates of execution, registration, renewal of registration, and satisfaction, to the names, addresses, and occupations of the parties, to the amount of the consideration, and to any further prescribed particulars.

Debentures to which Act not to apply.

17. Nothing in this Act shall apply to any debentures issued by any mortgage, loan, or other incorporated company, and secured upon the capital stock or goods, chattels, and effects of such company.

Extent of Act.

18. This Act shall not extend to Scotland or Ireland.

SCHEDULE.

Form of Bill of Sale.

SCHED.

This indenture made the day of between *A. B.* of of the one part, and *C. D.* of of the other part, witnesseth that in consideration of the sum of £ now paid to *A. B.* by *C. D.*, the receipt of which the said *A. B.* hereby acknowledges [*or whatever else the consideration may be*], he the said *A. B.* doth hereby assign unto *C. D.*, his executors, administrators, and assigns, all and singular the several chattels and things specifically described in the schedule hereto annexed by way of security for the payment of the sum of £ , and interest thereon at the rate of per cent. per annum [*or whatever else may be the rate*]. And the said *A. B.* doth further agree and declare that he will duly pay to the said *C. D.* the principal sum aforesaid, together with the interest then due, by equal payments of £ on the day of [*or whatever else may be the stipulated times or time of payment*]. And the said *A. B.* doth also agree with the said *C. D.* that he will [*here insert terms as to insurance, payment of rent, or otherwise, which the parties may agree to for the maintenance or defeasance of the security*].

Provided always, that the chattels hereby assigned shall not be liable to seizure or to be taken possession of by the said *C. D.* for any cause other than those specified in section seven of the Bills of Sale Act (1878) Amendment Act, 1882.

In witness, &c.

Signed and sealed by the said *A. B.* in the presence of me *E. F.* [*add witness' name, address, and description*].

BILLS OF SALE ACTS, 1890 AND 1891.

53 & 54 Vict. Chap. 53.

An Act to exempt certain letters of hypothecation from the operation of the Bills of Sale Act, 1882.

[18th August, 1890.]

Be it enacted by the Queen's most excellent majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Exemption of securities on imported goods from 41 & 42 Vict. c. 31, and 45 & 46 Vict. c. 43.

1. An instrument charging or creating any security on or declaring trusts of imported goods given or executed at any time prior to their deposit in a warehouse, factory, or store, or to their being reshipped for export, or delivered to a purchaser not being the person giving or executing such instrument, shall not be deemed a bill of sale, within the meaning of the Bills of Sale Acts, 1878 and 1882 (*a*).

Saving of 46 & 47 Vict. c. 52, s. 44.

2. Nothing in this Act shall affect the operation of section forty-four of the Bankruptcy Act, 1883, in respect of any goods comprised in any such instrument as is hereinbefore described, if such goods would but for this Act be goods within the meaning of sub-section three of that section.

Short title.

(3) This Act may be cited as the Bills of Sale Act, 1890.

(*a*) S. 1 has been thus amended by the Bills of Sale Act, 1891 (54 & 55 Vict. c. 35).

RULES OF DECEMBER, 1883, RELATING TO BILLS OF SALE.

RULES 1—10.

1. These Rules may be cited as "The Rules of the Supreme Court, Bills of Sale Acts, 1878 and 1882," and shall stand in lieu of "The Rules of the Supreme Court, December, 1882," which shall be and are hereby annulled.

2. These Rules shall come into operation on the 1st January, 1884.

Abstract.

3. The abstract of the contents of a Bill of Sale, required by the Bills of Sale Act (1878) Amendment Act, 1882, to be transmitted to the registrar of a County Court, shall be in the form given in the Appendix hereto.

Abstract to be sealed and dated.

4. The abstract shall be sealed with the seal of the Bills of Sale Department of the Central Office of the Supreme Court of Judicature, and dated on the day on which it is transmitted by post to the registrar of the County Court named therein.

Abstract of re-registered bills of sale.

5. Where a bill of sale has been re-registered since the 31st October, 1882, or shall be re-registered hereafter under section eleven of the Bills of Sale Act, 1878, an abstract of the re-registration, sealed and dated, shall be transmitted by post to the registrar of the County Court to which such abstract should have been transmitted had the bill of sale been registered under the Bills of Sale Act (1878) Amendment Act, 1882.

Notice of a satisfaction of a bill of sale to be transmitted to local registry.

6. Where a memorandum of satisfaction has been or shall be written under section fifteen of the Bills of Sale Act, 1878, upon any registered or re-registered copy of a bill of sale, an abstract of which has been transmitted to any registrar of a County Court, a notice of such satisfaction, in the form in the Appendix hereto, duly sealed and dated, shall be transmitted to each of the registrars to whom an abstract of such bill of sale shall have been transmitted.

Abstracts to be numbered and filed.

7. The registrar shall number the abstracts and notices of satisfaction in the order in which they shall respectively be received by him, and shall file and keep them in his office.

Index, how to be kept.

8. The registrar shall keep an index, alphabetically arranged, in which he shall enter under the first letters of the surname of the mortgagor or assignor such surname with his Christian name or names, address, and description, and the number which has been affixed to the abstract.

Satisfaction to be noted in index.

9. Upon the receipt of a notice of satisfaction the registrar shall enter the notice of satisfaction on the abstract of the bill to which it relates, and shall note in the index against the name of the mortgagor or assignor the fact of the satisfaction having been entered.

Search and inspection of abstract.

10. The registrar shall allow any person to search the index at any time during which he is required by the County Court Rules for the time being to keep his office open, upon payment by such person of one shilling; and to make extracts from the abstract or notice of satisfaction upon payment of one shilling for each abstract or notice of satisfaction inspected.

RULES 11—12.

Office copy of abstract.

11. The registrar shall also, if required, cause an office copy to be made of any abstract or notice of satisfaction, and shall be entitled for making, marking, and sealing the same to the same fee as is payable in the Bills of Sale Department of the Central Office of the Supreme Court of Judicature, viz., sixpence per folio.

Authority to take oaths.

12. Every first and second class clerk in the Bills of Sale Department of the Central Office of the Supreme Court of Judicature shall, by virtue of his office, have authority to take oaths and affidavits in matters relating to that department.

No. 1.

ABSTRACT.

Local Registration of Bills of Sale.

Satisfaction entered.	No.	Mortgagor or Assignor.	Residence and Occupation.	Mortgagee or Assignee.	Nature of Instrument and Consideration.	Nature of Property Assigned.	Amount Secured, and how Repayable.	Rate of Interest.	Date of Instrument.	Date of Registration.	Date of Filing Affidavit of Renewal.
									188 .	188 .	188 .

To the Registrar of the County Court of _____ *Sent on the* *day of* , 188 .

holden at _____.

L. S.

No. 2.

NOTICE OF SATISFACTION.

Bills of Sale Registry,
Royal Courts of Justice,
London.

to

188 .

Registered [*or* Re-registered] 188 .
Abstract transmitted 188 .
Satisfaction entered 188 .

TAKE NOTICE THAT—

A memorandum of satisfaction to the above bill of sale was entered on the register on the above date.

(Signed)

L.S.

To the Registrar of the County Court
of holden at
Sent on the day of

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NOTE.—*Figures standing alone represent pages: "R." and "Rs." mean respectively Bankruptcy Rule and Rules: "C. C. R." is used for County Court Rules: "R. (A. O.)" means the Rules as to Administration Orders: "O. R." stands for Official Receiver: "B. T." for Board of Trade: and "L. P. R." for legal personal representative.*

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